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TOWNHOME  
DECLARATION  
FOR  
FAIRWAY PARK AT SKYLAND

DECLARANT:

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TOWNHOME DECLARATION  
FOR  
FAIRWAY PARK AT SKYLAND

THIS TOWNHOME DECLARATION for FAIRWAY PARK AT SKYLAND is executed with an effective date of July 27, 1999 by N D Enterprises L.L.C., a Colorado limited liability company.

ARTICLE 1  
STATEMENT OF PURPOSE OF DECLARATION

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:

Multi Family Tract 3, Skyland Initial Filing according to the recorded plat thereof bearing Reception No. 363852 and Replat of portions of Skyland, Initial Filing, filed April 26, 1983 as Reception No. 373701, EXCEPTING THEREFROM that portion of the subject property platted as Mountain Horizons at Skyland Condominiums, Building A and B as dedicated in plat bearing Reception No. 373292,

County of Gunnison,  
State of Colorado.

Section 1.2 Intention. Declarant, as the owner of the Property, intends to provide for individual townhome dwellings use and ownership of the Property as a Townhome Project consisting of individual townhome Lots.

Section 1.3 Statement of Purpose. To accomplish such intention, this Townhome 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 1.4 Declaration of Townhome 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 Fairway Park at Skyland.



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Section 1.5 Subdivision of Property. The property shall be subdivided and platted in multiple filings collectively known as "Fairway Park at Skyland." Each filing shall be designated as "Fairway Park at Skyland, Phase 1" et sequitur. The initial phase is platted as Fairway Park at Skyland, Phase 1 according to the recorded plat thereof filed 8-18 \_\_\_\_\_, 1999 and bearing Reception No. 495495 of the records of Gunnison County, Colorado.

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 2  
DEFINITIONS

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

Section 2.1 "Assessments" shall mean any 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.

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

Section 2.3 "Association Documents" shall mean this Townhome Declaration of Fairway Park at Skyland, the Articles of Incorporation and Bylaws of the Association, any Design Guidelines adopted by the Association and any Rules and Regulations adopted by the 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 "Common Expenses" shall mean:

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

2.6.2 The expenses of administration, operation, management and maintenance of Fairway Park at Skyland.

2.6.3 The maintenance, repair, painting and upkeep of the exterior surfaces of any Building or Townhome, including appurtenant decks, patios and fences, but specifically excluding the roof, doors, chimneys, windows, and decorative devices of the Owner and the structural components of such Building or Townhome.

2.6.4 The maintenance, care, upkeep and replacement of all Open Space, streets, driveways, parking areas, and sidewalks within Fairway Park at Skyland, including snow plowing and snow removal.

2.6.5 The maintenance, care and upkeep of all Landscaping on any Lot.

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

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

Section 2.7 "Declarant" shall mean N D Enterprises L.L.C., a Colorado limited liability company, its successors and assigns.

Section 2.8 "Declaration" or "Townhome Declaration" shall mean this Townhome Declaration for Fairway Park at Skyland.

Section 2.9 "Improvements" shall mean all Buildings, structures, parking areas, fences, walls, driveways, sidewalks, signs, excavation, site work, grading, road construction, utilities, Landscaping, lawns, trees, shrubbery, grass, flowers, decorative devices and any exterior construction or exterior improvements constructed, completed or maintained within the Property.

Section 2.10 "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 and any other decorative materials or decorative devices forming a part of any landscaping area.

Section 2.11 "Lot" shall mean a Lot as shown on the Plat of Fairway Park at Skyland, Phase 1, and any additional Phases as provided in Section 2.17 of this Townhome Declaration.

Section 2.12 "Member" shall mean any Person who is an Owner of a Lot holding membership in the Association.

Section 2.13 "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Lot, or interest therein, as security for the payment of any indebtedness. "First





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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 2.14 "Open Space" shall mean any area or tract or parcel of land denominated as such on the Plat as "Open Space."

Section 2.15 "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 2.16 "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 2.17 "Plat" or "Townhome Plat" shall mean the Townhome Plat of Fairway Park at Skyland, Phase 1, and all additional Phases as platted, as the same may be amended, enlarged or revised from time to time and affecting the Property. All Phases shall be collectively known as "Fairway Park at Skyland."

Section 2.18 "Property" shall mean and include all property subject to this Declaration.

Section 2.19 "Fairway Park at Skyland" shall mean all of the Property, as subdivided and platted by a Townhome Plat as defined in Section 2.17.

Section 2.20 "Townhome" or "Individual Townhome" shall mean the individual single-family residence, together with all appurtenances, constructed on any Lot.

Section 2.21 "Utility Easements" or "Easements for the Installation and Maintenance of Public Utilities" shall mean and include the entirety of platted Open Space, which may be used for the installation and maintenance of public utilities and the plowing and storage of snow, utility easements across Lots as shown on the Townhome Plat, and utility and snow plowing easements within all roads, streets, and parking areas.

### ARTICLE 3 DESCRIPTION OF LOT

Section 3.1 Description of Lot. Every instrument affecting title to a Lot in Fairway Park at Skyland, may describe that Lot as follows:

Lot \_\_\_\_\_, Fairway Park at Skyland, Phase \_\_\_\_, according to the Plat thereof filed \_\_\_\_\_, \_\_\_\_\_ and bearing 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 Fairway Park at Skyland shall be used exclusively for one single-family residence with one attached two car 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, except only for the initial Townhome constructed by the Declarant and any additional Improvements as approved by the Association in accordance with the Association Documents.

Section 4.5 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 a Land Use Change Permit from Gunnison County.

Section 4.6 Model Home and Sales Office. Notwithstanding the provisions of Section 4.5 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 Townhome on any Lot with a sales office located therein to advertise, show and sell Lots and Townhomes to

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

ARTICLE 5  
FAIRWAY PARK AT SKYLAND ASSOCIATION

Section 5.1 Government of Association. Fairway Park 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 5.2 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 5.3 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 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 5.4 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 Lot 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 5.5 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 5.6 Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as "Fairway Park at Skyland Rules and Regulations" governing, among other things, and without limitation:

5.6.1 The use of the Open Space and permitted activities within the Open Space.

5.6.2 The conservation, maintenance, repair and use of all buildings, structures, landscaping and uses within the Open Space.

5.6.3 The establishment of easements for walking, hiking, horse back riding, bicycling, and skiing. Provided, that no easement for such purpose shall be created or established upon any Lot.

5.6.4 Standards for the care, maintenance, repair, replacement, Improvement and use of all Lots and Townhomes, Buildings, structures and Landscaping situate upon such Lots.

5.6.5 The maintenance, repair and replacement of the exterior of all Townhomes including all exterior walls, doors, windows, exterior surfaces, roofs, chimneys, patios, decks, fences and Landscaping.

5.6.6 The maintenance and keeping of animals within Fairway Park at Skyland.

5.6.7 All matters delegated to the Association by this Declaration or the Association documents.

Section 5.7 Dedication of Open Space. All Open Space within Fairway Park at Skyland is intended for the common use and enjoyment by the Owners within Fairway Park at Skyland and for the installation, maintenance and repair of utility easements. The Open Space is hereby dedicated to the above and foregoing uses for the Owners, their families, employees, guests and invitees, and not to the use of the general public, under the terms and conditions contained in the Association Documents.

Section 5.8 Management of Open Space. The Association shall be responsible for the management and control of the Open Space and all Improvements thereon, and shall keep the same in a good, clean, attractive and pleasant condition and shall maintain and repair the same consistent with the purposes and uses of the Open Space as set forth in the Association Documents.

## ARTICLE 6 AUTHORITY OF ASSOCIATION

Section 6.1 Maintenance and Repair as a Common Expense. The Association has the following authority, duties and obligations, all of which shall be a Common Expense of the Association, to:

6.1.1 Properly maintain, repair and paint the exterior surfaces of any Townhome in an attractive and quality condition and to at all times keep the same in the condition and repair as when originally constructed, but specifically excluding from such

maintenance, repair, painting and upkeep the roof, chimneys, doors, windows and structural components of the Townhome.

6.1.2 At all times be responsible for the care, maintenance and upkeep of all Landscaping within any Lot.

6.1.3 Provided, however, in the event any maintenance, repair, replacement, painting or upkeep to any Townhome or the Landscaping of any Lot are 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 Roofs, Doors and Windows. The Owner of any Townhome shall be solely responsible for the care, maintenance, repair and replacement of the roofs, chimneys, doors, windows, structural components and utility service of his Townhome. In addition to all regular repairs and maintenance or replacements by such Owner, the Owner shall be responsible to replace a roof in its entirety in the event 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 pre-approved by the Association. In the event that any Owner fails to properly maintain, repair and replace any such roof, door, window, chimney, structural components or utility service, then the Association shall have the authority to do such maintenance, repair or replacement and to assess the Owner of such Townhome for all costs, fees and expenses incurred therefore and to issue a Default Assessment against the Owner's Lot in the event the same is not paid within thirty (30) days from the date of billing to the Association.

Section 6.3 Landscaping and Lawns. The Association shall be responsible for the care, maintenance and upkeep of all Landscaping and lawns within the Lot and within the Open Space including streets, cul-de-sacs, parking areas, utilities and recreational usage and the maintenance and upkeep of the same shall be a Common Expense of the Association.

Section 6.4 Right of Access. The Association, its officers, agents, employees and contractors shall have the irrevocable right to access each Lot and the Townhome 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 and roof of the Townhome, and any utilities 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 and roof of any Townhome.

Section 6.5 Damages. Any damage to all or part of any Townhome 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 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 6.6 Restoration. Any damage to any Townhome 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 6.7 Reconstruction of Townhome. In the event that any Townhome is destroyed in whole or in part due to fire or any other cause, the Owner shall immediately reconstruct, replace and rebuild the Townhome as it existed prior to such damage or destruction and in accordance with the Plans and Specifications for the original construction of such Townhome, subject only to such revisions or modifications as might be approved by the Association.

Section 6.8 Insurance By Owner. 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 Townhome, 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 ASSESSMENTS BY THE ASSOCIATION

Section 7.1 Acceptance of 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 Regular Assessments or charges; (2) any Special Assessments or charges; and (3) any Default Assessments or charges; all of which shall be fixed, established and collected as determined by the Association. The Regular, Special and Default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each Assessment is made until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

Section 7.2 Purposes of Regular Assessments. The Regular Assessments levied by the Association shall be limited to and used exclusively for the following:

7.2.1 The maintenance, repair, painting and upkeep of the exterior surfaces of any Building or Townhome, including appurtenant decks, patios and fences, but specifically excluding the roof, chimneys, doors, windows, decorative devices of the Owner and the structural components of such Building or Townhome.

7.2.2 The maintenance, repair or Improvement of all Landscaping and lawns of any Lot.

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

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

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

7.2.6 The maintenance and improvement of all Open Space including the construction, repairs and maintenance of all facilities contained within the Open Space.

Section 7.3 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 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 7.4 Special Assessments. In addition to the Regular Assessments set forth in Section 7.3 above, the Board of Directors may levy, in any fiscal year, one or more Special Assessments 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 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 Special Assessments. Notice of the amount and due dates for such Special Assessments shall be sent to each Owner at least thirty days prior to the due date thereof.

Section 7.5 Reserve Funds. As a part of the Regular Assessments, the Association shall be obligated to establish:

7.5.1 A Reserve Fund for the maintenance, repair and replacement of the exterior of all Townhomes required to be maintained by the Association and all Open Space.

The amount of such funds shall be determined by the Association and shall be set forth in the budget and shall be funded through monthly payments of the Regular Assessments and shall be held by the Association in a separate account.

7.5.2 A Reserve Fund for any taxes or insurance required to be paid by the Association and shall be held by the Association in a separate account.

7.5.3 Such accounts may be interest-bearing accounts and shall be held in trust for the benefit of the Members for such purposes.

Section 7.6 Apportionment of Assessments. All Regular and Special Assessments shall be apportioned and allocated equally among all Lots.

Section 7.7 Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a Default Assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or collected as provided herein. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Default Assessment at least thirty days prior to the due date.

Section 7.8 Fiscal Year. The Assessments of the Association shall be computed and determined on a fiscal year basis.

Section 7.9 Payable Monthly. Assessments shall be payable monthly in advance on or before the tenth day of each month by the Owners of the Lots unless the Association otherwise determines.

Section 7.10 Written Notice. The Association shall give written notice to the Owners of the Lots of the Regular Assessments, and Special Assessments if any, and shall deliver to each Owner itemized monthly statements.

Section 7.11 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 Assessment shall bear interest at a rate of 1.5% per month from and after the date the statement becomes due and payable.

Section 7.12 Assessments of Declarant. During the period of development of the Property and until the sale of a Lot by the Declarant the 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.

Section 7.13 Nonpayment of Assessments. Any Assessment, whether Regular, Special, or Default Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association, in its sole discretion, may take any or all the following actions:

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

7.13.2 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.

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

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

7.13.5 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 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 Statement of Lien shall secure all 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 attorneys' fees and cost 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 Assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.

7.13.6 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.

Section 7.14 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all Assessments and the Association's lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot.

Section 7.15 Owner's Obligation for Payment of Assessments. The amount of the 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 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 Common Expenses by waiver of the use or enjoyment of any of the Open Space Areas or abandonment of his Lot.

## ARTICLE 8 RIGHTS, DUTIES, PRIVILEGES AND OBLIGATIONS OF OWNER

Section 8.1 Duties and Limitations of Owner. The following limitations shall apply to the rights of any Owner:

8.1.1 No exterior addition or alteration to any Townhome 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.

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

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

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

8.1.5 The storage of all equipment, tools and personal property shall be appropriately stored indoors. Provided, however, properly maintained furniture, decorative

devices and personal use items may be maintained within any deck or patio in accordance with the rules and regulations of the Association.

8.1.6 No motor vehicles, trucks, mobile homes, recreational vehicles, golf carts, snowmobiles, ATVs, house trailers, travel trailers, camping trailers, motor homes, campers, trailers, motorcycles, motorbikes or other similar type vehicle or device may be parked, stored or maintained on any Lot unless within the Garage of the Lot. The driveway or access to the Garage of any Lot may be used for the parking of any motor vehicle (automobile, sport utility vehicle, van, or pick-up truck) of the Owner, the Owner's guests and invitees. Provided, however, a guest of the Owner of any Lot may temporarily park any of the above defined vehicles or recreational equipment on the driveway of the Lot for a period of time not to exceed seven (7) days in any one calendar year or to park the same in a designated parking area maintained by the Association for such time and in such manner as may be provided by the rules and regulations of the Association.

8.1.7 Garage doors shall remain closed at all times except when entering or exiting the garage.

8.1.8 At no time may any motor vehicle or recreational device be parked on any street or cul-de-sac within the Property, except that construction, service and delivery vehicles may be parked on a street for such period of time as is reasonably necessary to make a delivery or provide service or construction to a Lot or Open Space during daylight hours.

8.1.9 No signs of any type or kind shall be placed or displayed on any Lot without the prior written approval of the Association.

## ARTICLE 9 PROPERTY FOR COMMON USE

Section 9.1 Property for Common Use. The Association may acquire and hold for the use and benefit of all of the Owners, real and personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned by the Association on behalf of all 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 10  
REGISTRATION BY OWNER OF MAILING ADDRESS

Section 10.1 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 10.2 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 10.3 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.

ARTICLE 11  
RESERVATIONS BY DECLARANT

Section 11.1 Rights of Declarant. Notwithstanding any other provisions expressed or implied in this Declaration or the Association Documents of the Association, the Declarant specifically reserves unto itself, its successors and assigns the following rights:

11.1.1 To appoint the members of the Board of Directors for the maximum period of Declarant control in accordance with the Colorado Common Interest Ownership Act, as now in effect and as the same may be amended or revised.

11.1.2 To maintain a business and sales office, construction facilities, construction equipment, advertising signs and displays and other facilities as may be reasonably necessary, appropriate or customary during the construction, development and sale of all of the Lots within the Property.

11.1.3 The right to amend the Townhome Declaration and/or the Plat as provided in Section 15.3.

11.1.4 To maintain signs to advertise the Townhome Project.

11.1.5 To dedicate any easements as shown on the plat or within any easement area.

11.1.6 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.

11.1.7 To change the location of the individual Lots, Open Space, streets and parking areas to be platted as part of any subsequent phase of Fairway Park at Skyland, 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, which may be constructed upon any Lot; provided, however, that in no event may Townhomes within any subsequent phase be constructed easterly of the eastern-most Lot as depicted within the area denominated "Phase 2" (future development) of the original Plat.

11.1.8 The right, but not the obligation, to construct additional units in any subsequent phase of Fairway Park at Skyland so long as the total number of units or Lots within Fairway Park at Skyland do not exceed in the aggregate twenty-five (25) units or Lots.

## ARTICLE 12 INTERIOR OF TOWNHOME AND PERSONAL PROPERTY

Section 12.1 The Owner of a Lot shall be solely responsible to at all times properly maintain the interior of any Townhome 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 Townhome 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 13 PRINCIPLES OF INTERPRETATION

Section 13.1 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 13.2 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 13.3 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 13.4 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.

Section 13.5 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 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.

Section 13.6 Severability. This Townhome Declaration, 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 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 13.7 Attorneys' 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 or any provision of the Association Documents provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action. Further, in the event the Association retains or employs an attorney to enforce any lien granted to it under the terms of the Association Documents, or to collect any assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with the Association Documents, or to enforce the administration of the Association Documents as to any Owner, the Association shall be entitled to recover its reasonable attorneys' fees, together with all reasonable costs and expenses incurred by it in any such matter.

Section 13.8 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 13.9 Interest. Unless otherwise provided in this Townhome Declaration, 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 13.10 Skyland Community Association. Notwithstanding any other provision herein to the contrary, it is specifically understood and agreed that:

13.10.1 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.

13.10.2 In the event of any conflict between the terms and conditions of this Townhome Declaration and the documents referenced in subsection 1 above, then and in that event the documents referenced in subsection 1 shall prevail.

#### ARTICLE 14 ENFORCEMENT OF COVENANTS

Section 14.1 Violations Deemed a Nuisance. Every violation of this Townhome Declaration, 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 14.2 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:

14.2.1 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.

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

14.2.3 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.

14.2.4 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 14.3 Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

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

14.3.2 By Skyland Community Association.

Section 14.4 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 15 DURATION OF COVENANTS

Section 15.1 Term. The term of this Townhome Declaration for Fairway Park at Skyland, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2050. Thereafter, this Townhome Declaration for Fairway Park at Skyland shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 15.2 Amendment. This Townhome Declaration for Fairway Park at Skyland, 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 75% or more of the Lots in the Property and upon the written consent of the Board of Directors of the Association. Any such amendment shall be by an instrument executed by the President or Vice President of the Association and attested to by the Secretary of the Association, which instrument shall set forth the full text of the amendment and shall certify that the Owners of seventy-five percent (75%) or more of the Lots in the Property and the Board of Directors of the Association gave their written consent to the adoption of the amendment. Such amendment shall become effective upon the recording of the instrument as above set forth.





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**Section 15.3 Amendment by Declarant.** Notwithstanding the provisions of Section 15.2, the Declarant, or its successor in interest, reserves the sole right and power to modify or amend this Townhome Declaration and/or the Plat in any respect by executing and recording such amendment to the Townhome Declaration and/or amendment to the Plat in the records of Gunnison County, Colorado. The right to modify or amend this Townhome Declaration or the Plat, in whole or in part, at any time and from time to time, shall be effective until such time 75% of all Lots within the property have been sold or conveyed to a person, persons or legal entity other than the Declarant. Provided, however, the Declarant may not amend or revise the location and dimensions of any Lot which has been conveyed to a person, persons or legal entity other than the Declarant without the recorded 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: Louis F Costello  
Assistant General Manager

STATE OF COLORADO )  
 ) ss.  
County of Gunnison )

The foregoing Townhome Declaration for Fairway Park at Skyland has been acknowledged before me this 29 day of July, 1999, by LOUIS F. Costello as Manager of N D Enterprises L.L.C., a Colorado limited liability company. Assistant General

Witness my hand and official seal.

My commission expires: August 29, 1999



Colette A. Perusse  
Notary Public