

TOWNHOMES DECLARATION
FOR
POWDERVIEW DUPLEX TOWNHOMES

KNOW BY ALL MEN THESE PRESENTS,

WHEREAS, Robert E. Harmon, Deborah A. Harmon, Donald R. Williams, Helen B. Williams, David Baillie, James N. Jackson and Piper Industries, Inc., a Texas corporation, hereafter the "Declarant", are the owners of the following described real property situated in the County of Gunnison, State of Colorado:

A portion of Multi-Family Tract 1, SKYLAND, INITIAL FILING, according to the recorded Plat thereof bearing Reception No. 363852 and according to the REPLAT of portion of Skyland Initial Filing enlarging Multi-Family Tract 1, Bearing Reception No. 373701, said tract being in one particularly described on attached Exhibit A, County and State aforesaid.

WHEREAS, 4 residential units have been constructed thereon;
and

WHEREAS, Declarant desires to establish a Townhome project;
and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of 6 real property estates consisting of 6 townhome units together with the land on which said townhome units are situated; and

NOW, THEREFORE, Declarant does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, limitations and obligations shall be deemed to run with the land described on attached Exhibit A, shall be a burden and benefit to Declarant, their heirs, personal representative, successors and assigns and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, representatives, administrators, devisees or assigns.

1. Definitions. Unless the context shall expressly provide otherwise, the following definitions shall apply.

(a) "Association of Unit Owners", or "Association" means a non-profit or not for profit corporation hereafter duly organized and incorporated, the Certificate and By-Laws of which shall govern the administration of this Townhome project.

(b) "Building" or "buildings" means the building improvements constructed on the property.

(c) "Common Elements" means and includes the access road other facilities serving all townhome units and all areas denominated on the Map as "Common Elements".

(d) "General Common Expenses" means and includes:

(1) All sums lawfully assessed against all Townhome Units;

(2) Expenses of administration of the project and management, maintenance, repair or replacement of the access road and other facilities serving all Townhome Units;

(3) Expenses declared common general expenses by a majority of the Unit Owners or Association of Unit Owners.

(4) Expenses of administering and maintaining the access road shall be borne equally by owners of all Townhome Units subject to this Townhome Declaration, with each owner to pay a fraction of such expenses the numerator of which is one (1) and the denominator of which is the total number of townhome units upon which residential units have been constructed.

(e) "Entire Premises", "Premises", or Project means and includes the land, the building, common elements, all improvements and structures thereon, and all rights, easements and appurtenances belonging thereto.

(f) "Limited Common Expenses" means those expenses relating to a common wall or other facility serving the Owners of less than all of the Townhome Units in the project.

(g) "Majority of Owners" means those Owners owning 4 of the 6 townhome units in the project.

(h) "Managing Agent", as used herein, shall mean the person having responsibility for administration of the project.

(i) "Map" means and includes the engineering survey of the land described in Exhibit A dividing such land (and existing buildings) into 6 townhome units.

(j) "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Townhome Unit or any part thereof is encumbered.

(k) "Mortgagee" means any person named as the mortgagee or the beneficiary under any mortgage.

(l) "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, owning one or more Townhome Units; the term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(m) "Parcel" or "parcels" mean the individual lots of land, designated parcels T1, T2, T3, T4, T5 and T6 into which the real property described on Exhibit A has been subdivided and described on the Map.

(n) "Townhome", "Townhome Unit", or "Unit" means one of 6 parcels of land and all improvements constructed thereon, designated as Units T1, T2, T3, T4, T5 and T6 on the map to be filed for record.

2. **Map.** Prior to the first conveyance of a Townhome Unit, Declarant shall cause to be filed for record a Map. The Map shall depict and show at least the following: The boundary lines of each of the 6 Units comprising the project, the thickness of any existing common walls between Units and the Unit numbers or other designation. The Map shall contain the dual certificate of a registered engineer certifying that the Map substantially depicts the boundary lines of the 6 Units comprising the project, common walls, if any, the Unit designations and that the Map was prepared subsequent to substantial completion of the improvements depicted.

In interpreting the Map the existing physical boundaries of each common wall as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map from time to time, to conform same to the actual physical location of the constructed common wall and to any changes, modifications, alterations or additional improvements.

3. Division of Property into Townhome Units. The real property and improvements to be constructed thereon are hereby divided into the following fee simple estates:

Six (6) separate fee simple estates, each such estate consisting of a parcel of land as depicted on the Map and all buildings constructed thereon. Each Townhome Unit is described on the Map, which by this reference is made a part hereof. Each Townhome Unit shall be identified on the Map by the letter and number shown thereon.

4. Inseparability of a Unit. Each Unit consisting of an individual parcel of land and all improvements constructed thereon shall be inseparable and may be conveyed, leased, encumbered, devised or inherited only as a Townhome Unit.

5. Description of a Townhome Unit. Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Townhome Unit by its identifying unit number, followed by the words, "Powderview Duplex Townhomes" with further reference to the recorded Declaration and Map. Every such description shall be deemed good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Unit. Each such description shall be construed to include a non-exclusive easement for ingress and egress as shown on the Map to the exclusion of all third parties not lawfully entitled to use the same.

6. Separate Assessment and Taxation - Notice to Assessor. Declarant shall give written notice to the Assessor of Gunnison County, Colorado, of the creation of the Townhome Unit ownership of this property, so that each Townhome Unit shall be deemed a separate parcel and subject to separate assessment and taxation.

7. Title. A Townhome Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of Colorado.

8. Use of Units. Each Owner shall have exclusive ownership and possession of his Unit. The Units in the project shall be used for single family residential purposes only. No caretaker or other apartments or dwellings shall be allowed.

9. Termination of Mechanic's Lien Rights and Indemnification. No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Owner thereof or his agent or his contractor or subcontractor shall be a basis for filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any Owner for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the Owner's Unit at such Owner's request.

10. Administration and Management. The operation and management of this Townhome Property shall be undertaken by the Managing Agent, who shall be the Declarant or his designated agent or successor. The Managing Agent, Association or a majority of unit owners shall have the right to promulgate rules and regulations not inconsistent with this Declaration.

11. Reservation for Access-Maintenance, Repair and Emergencies. The Managing Agent shall have the irrevocable right to have access to each Townhome Unit from time to time during repair or replacement of a Common Wall or Common Roof or for making emergency repairs necessary to prevent damage to the Common Wall, Common Roof, adjacent Unit or Common Elements.

Damage to the interior of any part of a Unit resulting from maintenance, repair emergency repair or replacement of the Common Wall or Common Roof or as a result of emergency repairs within another Unit at the instance of the Managing Agent shall be a Common Expense of both Owners; provided, however, that if such damage is the result of the negligence of the Unit Owner, then such Unit Owner shall be responsible for all of such damage. Restoration of the damaged improvements shall be to substantially the same condition as prior to the damage.

12. Maintenance Responsibility of Unit. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own that part of any Building situated upon his parcel. The Owner shall not be deemed to own any utilities running through his Unit which serve another Unit except as a tenant in common with the other Owner.

An Owner shall maintain and keep his own Unit in good taste and repair. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the building or any part thereof or impair any easement or hereditament.

The cost of maintaining each common wall shall be a limited common expense to be borne equally by the owners on either side of said wall. In the event of damage or destruction of said wall from any cause, other than the negligence of either Owner, the Managing Agent or Owners shall, at joint expense, repair or rebuild said wall, and each Owner, his successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. If either Owner's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or reconstruction. If either Owner shall neglect or refuse to pay his share, or all of such cost in case of negligence, the Managing Agent or the other Owner may have such wall repaired or restored and shall be entitled to have a mechanic's lien or Association assessment lien on the premises of the Owner so failing to pay, for the amount of such defaulting Owner's share of the repair or replacement cost.

The exterior of all units in the project shall be decorated harmoniously.

The expense of maintaining, repairing and replacing a common roof shall be proportionately shared by the owners of the adjoining units.

13. Compliance with Provisions of Declaration. Each Owner shall comply strictly with the provisions of this Declaration and with all rules and regulations promulgated by the Association, the Managing Agent or by a majority of owners. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Managing Agent on behalf of the Owners or by an aggrieved Owner.

14. Revocation or Amendment to Map or Declaration.

(a) The boundary line separating units may be partially or completely relocated if the Owner(s) of such units and the holders of any recorded mortgage or deed of trust covering or affecting such units consent and agree to such relocation by instrument(s) duly recorded.

(b) Except as provided in sub-paragraph 14(a), above, neither the Map nor this Declaration shall be revoked nor shall any of the provisions herein be

amended unless the Owners of a majority of the Units, or more, and all of the holders of any recorded Mortgage or deed of trust covering or affecting any or all Townhome Units consent and agree to such revocation or amendment by instrument(s) duly recorded.

15. Assessment for Common Expenses. All Owners of constructed units shall be obligated to pay the estimated assessments imposed by the Managing Agent to meet the Common Expenses such as maintenance of the access road. Except for insurance premiums, the assessments shall be equal, with the Owner of each Unit responsible for a proportionate share of the General Common Expenses and a proportionate share of the Limited Common Expenses attributable to his Unit based on a fraction the numerator of which is one (1) and the denominator of which is the total number of townhome units upon which residential units have been constructed. Assessments for insurance premiums shall be based upon that proportion of the total premiums that the insurance carried on a Townhome Unit bears to total coverage. Assessments for the estimated Common Expenses, including insurance, shall be due quarterly in advance on the first day of each calendar quarter. The Managing Agent shall prepare and deliver or mail to each Owner an itemized quarterly statement showing the various estimated or actual expense for which the assessments are made. Contribution for quarterly assessments shall be prorated if the ownership of a Townhome Unit commences on a day other than the first day of a quarter.

The assessment made upon the Owners shall be based upon the cash requirements deemed to be such aggregate sum as the Managing Agent shall from time to time determine is to be paid by all of the Townhome Unit Owners, including Declarant, to provide for the payment of all estimated General or Limited Common Expenses. Said sum may include, among other things, without limitation, the following: Expenses of management; maintenance of the access road; taxes and special assessments until separately assessed; assessments imposed by Skyland Subdivision or any special district; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all Townhome Units; casualty and public liability and other insurance premiums; landscaping and care of common grounds; common lighting; exterior decoration; repairs and renovations; garbage collections; wages; legal and accounting fees; management fees; expenses and liabilities incurred by the managing Agent or the Declarant under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the General and Limited Common Expenses. The omission or failure of the Managing Agent to fix the assessment for any quarter shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

16. Insurance. The Managing Agent shall obtain and maintain at all times insurance of the type and kind provided hereinabove, and including for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other buildings, fixtures, equipment and personal property similar in construction, design and use, issued by responsible insurance companies authorized to do business in the State of Colorado. The insurance shall be carried in blanket policy form naming the Managing Agent as the attorney-in-fact for the Townhome Unit Owners, which policy or policies shall identify the interest of each Townhome Unit Owner, and which shall provide for a standard, noncontributory mortgage clause in favor of each first Mortgagee, and shall further provide that it cannot be cancelled by either the insured or the insurance company until after ten days' prior written notice to each first Mortgagee. The Managing Agent shall, upon request of any first Mortgagee, furnish a certified copy of such blanket policy and the separate certificate identifying the interest of the mortgagee.

All policies of insurance shall provide that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Insurance coverage on the furnishings, additions and improvements incorporated into a Unit and all items of personal property belonging to an Owner and casualty and public liability insurance coverage within each individual Unit shall be the responsibility of the Owner thereof.

17. Owners' Personal Obligation for Payment of Assessments.

The amount of the Common Expenses assessed against each Townhome Unit shall be the personal and individual debt of the Owner thereof, his heirs, representatives, successors and assigns. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any part of the Project or by abandonment of his Unit.

18. Lien for Nonpayment of Common Expenses. All sums assessed but unpaid for the share of Common Expenses chargeable to any Townhome Unit, including interest thereon at eighteen percent per annum, or at such other rate of interest fixed by the Managing Agent, or majority of Owners of Units, shall constitute a lien on such Unit superior (prior) to all other liens and encumbrances except:

(a) Tax and special assessment liens on the Unit in favor of any taxing entity; and

(b) All sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrance, including additional advances, refinancing or extension of these obligations made thereon prior to the arising of such a lien.

To evidence such lien the Managing Agent may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner or reputed Owner of the Townhome Unit and a description of the Townhome Unit. Such a notice shall be signed by the Managing Agent and may be recorded in the office of the Clerk and Recorder of the County of Gunnison, State of Colorado. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment, and may be enforced by the foreclosure on the defaulting Owner's Townhome Unit by the Managing Agent in like manner as a mortgage or deed of trust on real property upon recording of a notice thereof. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees and costs. The Managing Agent shall have the power to bid in the Townhome Unit at foreclosure sale and shall have the power to acquire and hold, lease, mortgage and convey same.

The amount of the Common Expenses assessed against each Townhome Unit shall also be a debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing same.

Any encumbrancer holding a lien on a Townhome Unit may pay any unpaid Common Expense payable with respect to such Unit, and upon such payment such encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the lien of his encumbrance.

19. Liability for Common Expense upon Transfer of Townhome Unit. Upon Payment of a reasonable fee and upon the written request of any Owner or any Mortgagee or prospective Mortgagee of a Townhome Unit, the Managing Agent shall issue a written statement setting forth the amount of the unpaid Common Expenses, if any, with respect to the subject Unit, the amount of the current quarterly or special assessment and the date of such assessment becomes due, credit for advance payments or for prepaid items, which shall be conclusive upon the Managing Agent in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within fourteen days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided, however, that upon payment of a reasonable fee, and upon written request, any prospective grantee shall be entitled to a written statement from the Managing Agent setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current quarterly or special assessments and the date that such assessment becomes due, credit for advance payments or for prepaid items, which shall be conclusive upon the Managing Agent. Unless such request for a statement of indebtedness shall be complied with within fourteen days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessment against the subject Unit.

20. Mortgaging a Townhome Unit - Priority. Any Owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law.

21. Destruction of Building. In the event of destruction of a Building or any portion thereof, the Building so destroyed shall be restored at the expense of owner. In the event of destruction of a Building which contains two units, the Building so destroyed shall be restored at the joint and equal expense of the adjoining owners, according to a uniform architectural plan and finish; and if any unit is but partially destroyed so that the cost of restoring it is not equal to that of restoring the adjoining unit, then the amount shall be apportioned between owners according to the individual cost.

22. Easement. No Owner shall alter or change any common wall in any manner, interior decoration excepted, and said common wall shall always remain in the same location as when erected, and each party to said common or division wall shall have a perpetual easement in that part of the premises of the other on which said common wall is located, for common wall purposes.

23. Personal Property for Common Use. The Managing Agent may acquire and hold for the use of and benefit of all of the Townhome Owners, real, tangible, and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be owned in common by the Townhome Owners and shall not be transferable except with a transfer of a Townhome Unit. A transfer of a Townhome Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the

purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. The transfer of title to a Townhome Unit under foreclosure shall entitle the purchaser to the beneficial interest in such personal property associated with the foreclosed Townhome Unit upon notice to the Association of such transfer.

24. Construction of Additional Units. The owners of units T3, T4, T5 and T6 acknowledge that Piper Industries, Inc., owner of Units T1 and T2, has the right to construct one duplex townhome consisting of two units on Units T1 and T2.

25. Mailing of Notices. Each Owner shall register his mailing address with the Managing Agent and all notices of any kind given pursuant to this Declaration intended to be served upon any Owner shall be sent by certified mail, return receipt requested, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association and Managing Agent shall be given by certified mail, return receipt requested, postage prepaid, to the address thereof. All notices or demands to be served on Mortgagees pursuant hereto, shall be sent by certified mail, return receipt requested, postage prepaid, addressed in the name of the Mortgagee at such address as the Mortgagee may have furnished to the Association and the Managing Agent in writing. Unless the Mortgagee so furnished such address, the Mortgagee shall be entitled to receive none of the notices provided for in this Declaration. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section. No notice of any kind shall be effective unless such notice conforms to the requirements of this paragraph.

26. Period of Townhome Ownership. The separate Townhome estates created by the Declaration and the Map shall continue until this Declaration is revoked in the manner and as is provided in paragraph 14 of this Declaration.

27. General.

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

(b) The provisions of this Declaration shall be in addition and supplemental to all other applicable provisions of law.

(c) Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

28. Attorney's Fees. It is agreed that if any action is brought in a court of law by any Unit Owner or by the Association or Managing Agent, or by any other party to this Declaration as to the enforcement or interpretation or construction of this Declaration or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action. Additionally all expenses, including reasonable attorney's fees, incurred in collecting delinquent assessments shall be paid by the defaulting Owner.

29. Binding Agreement. The provisions of this Declaration, and all subsequent agreements and determinations, lawfully made by the Association or Managing Agent, shall be appurtenant to and


run with the land and be binding on all Owners of Units, their representatives, heirs, successors and assigns.

30. **Ratification.** This Declaration shall be effective upon the recording of Ratifications executed by all persons comprising the Declarant and by holders of all first liens encumbering the property described on attached Exhibit A.

IN WITNESS WHEREOF, these Declarations have been duly executed this 26th day of February, 1991 by Paul P. Piper, Jr. as President and David E. Chisum as Secretary of Piper Industries, Inc., a Texas corporation.

Piper Industries, Inc., a Texas corporation

By: *PPiper*
Paul P. Piper, Jr., President

 *David E. Chisum*
David E. Chisum, Secretary

STATE OF Texas)
COUNTY OF Dallas) ss.

The foregoing instrument was acknowledged before me this 26th day of February, 1991, by Paul P. Piper, Jr. as President and David E. Chisum as Secretary of Piper Industries, Inc., a Texas Corporation

Witness my hand and official seal.

My commission expires: *Sherry L. Beckham*
Notary Public

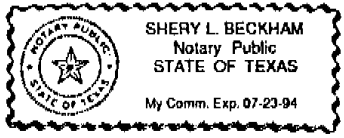


EXHIBIT A
TO
TOWNHOME DECLARATION
FOR
POWDERVIEW DUPLEX TOWNHOMES

The real property comprising Phase I, Powderview at the Greens, a Condominium is more fully described as:

A portion of Multifamily Tract 1 of Skyland Initial Filing according to a recorded plat thereof bearing Reception No. 363852 and according to the Replat of portions of Skyland, Initial Filing enlarging Multifamily Tract 1 bearing Reception No. 373701, said portion of Multifamily Tract 1 being more particularly described as follows:

Beginning at a Point that is the most southerly corner of said Tract 1 (this corner also being a corner of Commercial Tract 3); thence the following courses around the herein described parcel;

1. North 34° 29' 48" East 340.00 feet along the southeasterly boundary of said Tract 1;
2. North 55° 30' 12" West 130.00 feet;
3. South 34° 29' 48" West 202.00 feet;
4. South 55° 30' 12" East 90.00 feet;
5. South 34° 29' 48" West 81.60 feet;
6. South 50° 00' 00" West 43.82 feet to a point on the northeasterly boundary of Slate River Drive;
7. 53.62 feet along the arc of a curve to the left, said curve having a radius of 1286.06 feet and a chord of South 40° 10' 47" East 53.62 feet to the Point of Beginning.

County of Gunnison,
State of Colorado.

The herein described parcel contains 0.73 acres more or less.