

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
TIERRA VISTA VILLAGE**

THIS DECLARATION is made on the date hereinafter set forth, by 3S, LLC, a Colorado limited liability company, and 3S Investment, LLC, both having an office at P.O. Box 4234, Durango, Colorado, 81302, (collectively referred to herein as "Declarant").

**RECITALS**

1. 3S, LLC, a Colorado limited liability company is the owner of a tract of land described as Lot 2, more particularly described on Exhibit "A" and 3S Investment, LLC a Colorado limited liability company is the owner of a tract of land described as Lot 1, more particularly described on Exhibit "A" which exhibit is attached hereto and incorporated herein (the "Property"); and

2. The Property is the subject of a Planned Development Agreement for the Tierra Vista Village Subdivision between the City of Durango and 3S, LLC and 3S Investment, LLC.

3. Declarant desires to create a Common Interest Community comprised of up to thirty-two units to be located on the Property, to be described as Units 1-32 and otherwise known as the "Tierra Vista Village" in which the units will be designated for separate ownership and the remainder of which will be designated for general or limited common ownership by the Association; and

4. Declarant states that all of the real property described in Exhibit A and the units shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

**ARTICLE 1  
SUBMISSION; DEFINED TERMS**

**Section 1.1 Submission of Property.**

(a) Declarant hereby declares that all of the Property shall be held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions which are set forth herein and as described on the Plat for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof. Additionally, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. §38-33.3-101, et seq., as it may be amended from time to time. In the event the CCIOA is repealed, the CCIOA, on the effective date of this Declaration, shall remain applicable.

**Section 1.2 Defined Terms.** Each capitalized term not otherwise defined in this Declaration or in the Plat or map shall have the meanings specified or used in the CCIOA.

(a) First Lienor shall mean any person named as a mortgage or beneficiary in any first mortgage, or any successor to the interest of any such person under such first mortgage.

(b) Plat shall mean one or more as-built plats of the Tierra Vista Village Project recorded with the La Plata County Clerk and Recorder depicting all or a part of the Property subject to this Declaration and any amendments or supplements thereto.

(c) Common Elements shall mean all portions of the Project except the Units. The Common Elements are owned by the Association and consist of General Common Elements and Limited Common Elements.

## **ARTICLE 2 NAMES**

### **Section 2.1 Names.**

(a) The name of the development shall be Tierra Vista Village which shall consist of three duplexes and twenty-six stand-alone residences.

(b) The name of the Association is Tierra Vista Village Homeowner's Association, Inc. (hereinafter the "Association").

## **THE ASSOCIATION**

**Section 3.1 Authority.** The business affairs of Tierra Vista Village shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

### **Section 3.2 Powers.**

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the CCIOA necessary and proper to manage the business and affairs of Tierra Vista Village. Such powers shall include, without limitation, levying Assessments against Owners, imposing a lien on Units for any unpaid or uncollected Assessments or penalties, and foreclosing any such liens, enforcing any deed restrictions and this Declaration, acquiring, holding, owning, leasing, mortgaging and disposing of property (except as such disposition of property may be limited in accordance with CCIOA), the adoption of rules and regulations, the defending, prosecuting or intervention in litigation on behalf of all members, the borrowing of monies for Association purposes and the right to pledge future income in order to secure such borrowings. The term "pledge of future income" shall include the right to impose a Special Assessment for repayment of such borrowings and to assign such Special Assessment (and all lien and collection rights appurtenant thereto) to the lender as security for repayment thereof. The Association may exercise any other right, power or privilege, given to it by this Declaration, the Articles and Bylaws of the Association, or by law.

(b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

(c) Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, to other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**Section 3.3 Declarant Control.** The Declarant shall have all the powers reserved in C.R.S. §38-33.3-303(5) of the CCIOA to appoint and remove officers and members of the Executive Board (referred to herein as the "Board of Directors").

**Section 3.4 Memberships.** Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning each Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his or her membership in the Association in any way except upon the sale or encumbrance of a Unit, and then only to the purchaser or First Lienor of the Unit.

## **ARTICLE 4 UNITS**

**Section 4.1 Number of Units.** The maximum number of Units in Tierra Vista Village shall be thirty-two (32).

### **Section 4.2 Identification of Units.**

(a) The identification number of each Unit is shown on the Plat. The term "Unit" means that portion of the Property within the building footprint described as such on the Plat. The Unit as so described shall be conveyed in fee simple ownership together with the land upon which it is situate.

(b) Each Unit shall consist of two stories and contain a minimum of three bedrooms and two baths.

(c) Unit 32 is an existing residence which is to be incorporated into and made subject to these Declarations for Tierra Vista Village.

**Section 4.3 Non-Partitionability.** No Unit may be partitioned, separated or subdivided into two or more parcels, tracts, lots or Units.

## **ARTICLE 5 COVENANT FOR COMMON EXPENSE ASSESSMENTS**

**Section 5.1 Creation of Association Lien and Personal Obligation for Assessments.** Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefore whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association (i) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association (referred to herein as the "Association Dues"); and (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration. Such assessments, together with fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may exempt himself/herself from liability for any assessment by abandonment of his or her Unit or by waiver of the use and enjoyment of the Common Area.

The assessments of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first lien Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Associations' lien except that sale or transfer of any Unit pursuant to foreclosure of any first Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the CCIOA. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessments thereafter becoming due, nor from the lien thereof.

**Section 5.2 Apportionment of Common Expenses.** Common Expenses are expenditures made, or liabilities incurred by, or on behalf of, the Association together with any allocations or reserves. Common Expenses shall be assessed against all Units for the upkeep, repair and replacement of all General Common Elements, with each Unit to pay a prorata percentage according to the percentage share as set forth in Section 10.2.

**Section 5.3 Purpose of Assessments.** The assessments levied by the Association through its Board of Directors shall be used generally for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Common Interest Community and for the maintenance, repair, and replacement of Common Elements. Without limitation, said assessments may be used for the following purposes:

(a) Maintenance, repair, and improvement of any common access, (including the private roads to be known as Tierra Vista and Tierra Verde) sidewalks, gazebos, common area privacy fencing, retaining walls, exterior street lighting, parking areas, mailboxes, and signage within the Property;

(b) Weed control, and maintenance, including cutting, trimming, mowing, fertilizing and general upkeep of any common lawns, trees, shrubbery and other common landscaped areas including the entrance planter boxes;

(c) Common area lighting, underground irrigation sprinkler system for the purpose of watering of common landscaping, and snow removal expenses from common sidewalks, and parking spaces;

(d) All costs and expenses pertaining to the operation of the Association;

(e) Obtaining and maintaining insurance, establishing and maintaining reserves for maintenance of Common Elements that must be replaced or repaired on a periodic basis, taxes, capital improvements, and satisfying unpaid assessments;

(f) Legal and accounting fees, management fees; and

(g) Any other purpose approved by a majority vote of all of the Members of the Association.

**Section 5.4 Assessment of Utilities.** Electricity, gas, cable, telephone, water, and sewer services are separately metered for each Unit and the charges for such utilities shall be paid by the Unit Owner directly to the utility company providing such service. Trash and water and electricity used in connection with General Common Elements shall be separately metered and billed by the Association as a Common Expense in accordance with each Unit Owner's allocated share of Common Expenses as determined by the allocation described in Section 10.2.

**Section 5.5 Association Dues.** The Board of Directors shall prepare a budget before the closing of each fiscal year to the Association and submit the budget to the Association. Association Dues for Common Expenses shall be based upon the Association's estimated advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The Association shall establish the first assessment year by the action

of adopting a budget and the levying of the first Association Dues in accordance with its Bylaws.

Within thirty (30) days after adopting a proposed Budget, the Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting, 67% of the votes allocated to all Owners, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board.

If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 5.5, the Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting 67% of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

**Section 5.6 Commencement of Common Expense Assessments.** Association Dues may be collected in the manner as determined by the Board of Directors i.e., annually, quarterly or monthly. Association Dues shall begin for Units at such time as Declarant, in its discretion, deems it advisable to begin the collection of assessments; however, Unit Owners should be prepared to commence payment of annual assessments upon purchase of a Unit. Declarant shall not be required to make annual assessments on those Units for which construction has not been completed. Once a unit is constructed and approved for occupancy by the Building Department of the City of Durango, Declarant shall be obligated to pay the annual assessments for each Unit owned by it. Until the commencement of the collection of assessments, the Declarant shall pay all of the expenses incurred and paid for by the Association.

**Section 5.7 Working Fund Contribution.** For the purposes of capitalization of the Association, the Association or Declarant, as the case may be, shall require the first Owner of each Unit (other than Declarant) to make a non-refundable payment to the Association in the amount of \$500.00 at the closing of the sale of the Unit, which sum shall be retained by the Association as a working fund. Said working fund shall be collected and transferred to the Association at the time of closing of the sale of the Unit by the Declarant and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as such assessments become due and such payment shall not be considered an advance payment of regular assessments. The working capital fund shall be used by the Association, and/or Declarant, for insurance deductibles, capital expenditures for repair or replacement of Common Elements, emergencies, and such other expenses which do not occur on a regular and on-going

basis. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses or construction costs, nor to make up any budget deficits during the period of Declarant Control. The initial working fund capital account shall be established upon the conveyance of the first Unit in the first phase of the Project by Declarant to a third party purchaser.

**Section 5.8 Special Assessments.** In addition to the Association Dues authorized above, the Association may levy, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses, provided that any Special Assessment in excess of Three Thousand Dollars (\$3,000.00) per Unit shall (except in the event of an emergency where there shall be no such limit) require a majority approval of those voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present pursuant to the by laws of the Association. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments. If any assessment is caused by the misconduct of any Unit Owner, the Association, at its discretion, may assess that expense exclusively against such Owner's Unit.

**Section 5.9 Effect of Non-Payment of Assessments.** Any assessment, charge or fee provided in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the date due thereof shall bear interest at the rate of 18% per annum and the Association, at its option, may assess a late charge thereon and suspend the voting rights of the Unit Owner during the period of delinquency. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving, the Association's lien therefore.

**Section 5.10 Failure to Assess.** The omission or failure of the Board to fix the Association Dues amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Association Dues on the same basis as for the last year for which an Assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**Section 5.11 Owner Caused Damage.** If, due to the act or neglect of an Owner, or such Owner's guests, loss or damage shall be caused to any person or property within the Tierra Vista Village common interest community, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with the costs of collection and reasonable attorney's fees, may be collected by the Board of Directors exclusively from such Owner as an assessment against such Owner in accordance with paragraph 5.8.

**Section 5.12 Agreement in Advance Regarding Surpluses.** The Board shall establish an adequate reserve fund for the maintenance repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. To the extent possible, such reserve fund shall be funded through the monthly installments of the annual Common Expense Assessments. Any surplus funds derived from assessments shall be transferred to the reserve fund or used for Association operations during the next fiscal year, in the Executive Board's sole discretion. In no event shall any surplus funds be distributed to Owners. Each Owner by acceptance of the deed to the Owner's Unit, for each fiscal year of the Association in which such Unit is owned, hereby authorizes the Executive Board, in its sole discretion, to either use such surplus during the next fiscal year or to transfer to the reserve fund.

## **ARTICLE 6 LIMITED COMMON ELEMENTS**

### **Section 6.1 Limited Common Elements.**

(a) A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the Plat, or by the CCIOA, for the exclusive use of one or more but fewer than all of the Lots.

(b) The driveways allocated to a Unit and serving only that Unit;

(c) Any areas designated as L.C.E. on the Plat (including the backyard areas); and

(d) Any common walls or "Party Walls" located between two or more Units and which separates the Units; and

(e) All exteriors, windows, roofs and doors of Units.

**Section 6.2 Maintenance of Limited Common Elements.** The Owner of a Unit shall be responsible for routine maintenance and upkeep of all of the Limited Common Elements described in Section 6.1, including, but not limited to, removal of leaves and debris therefrom and snow removal, and for all routine yard maintenance and upkeep. The Association, however, shall be responsible for the maintenance, repair and replacement of Limited Common Elements and shall assess Owners with respect to same as set forth in Section 6.3 below.

**Section 6.3 Expense Allocation for Limited Common Elements.** Any Common Expense (including those expenses which require a special assessment) associated with the maintenance, repair or replacement of a Limited Common Element assigned to more than one Unit shall be assessed equally against the Units to which the Limited Common Element is assigned. Any expense associated with the maintenance, repair or replacement of a Limited Common Element assigned to one Unit shall be assessed only against that Unit. For example, the expense associated with the repair and replacement of a driveway shall be assessed only against the Unit to

which that driveway is assigned. To the extent that insurance premiums are increased as a result of a claim pertaining to one or more L.C.E.s belonging to less than 100% of the Units, the resulting increase in premiums shall be treated as a general common expense to be assessed against all Unit owners according to their pro rata share.

**Section 6.4 Allocation of Reserved Limited Common Elements.**

(a) Portions of the Common Elements may be allocated as Limited Common Elements. These portions of the Common Elements may include, without limitation, gazebo and garden plot areas, vehicle parking areas and other areas.

(b) The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Lots to which these specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of C.R.S. §38-33.3-208 of the CCIOA (i) by making such an allocation in a recorded instrument or (ii) in the deed to the Unit to which such Limited Common Element area shall be appurtenant or (iii) by recording an appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be to Lots owned by the Declarant. Subsequent to the Declarant control period, the right of allocation pursuant to this Section shall pass from the Declarant to the Board of Directors and the Declarant may not thereafter exercise any such right.

**Section 6.5 Allocation of Specified Common Elements.** The Board of Directors may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-Owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board of Directors. Any such designation by the Board of Directors shall not be a sale or disposition of such portions of the Common Elements.

**Section 6.6 Party Walls.**

(a) For purposes of this Section 6.6, "Party Wall" shall mean and refer to any wall which is part of a Unit and located between two or more Units and is placed on or immediately adjacent to a Unit lot line and which separates two Units.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Units which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Unit, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) To the extent not inconsistent with the provisions of this Section 6.6, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(d) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Units sharing the Party Wall. If the Owner of one Unit sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Unit, and the same shall become and remain a lien against the Unit, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Units sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Unit, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(f) Notwithstanding any other provision of this Section 6.6, an Owner who by his negligent or willful act or omission causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(g) The right of any Owner to contribution from any other Owner under this Section 6.6 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(h) If any dispute arises concerning a Party Wall under the provisions of this Section 6.6, such dispute shall be arbitrated in the manner hereinafter provided. Three individuals (including one or more members of the Executive Board or one or more Owners or a combination of both) appointed by the President of the Association, none of whom may be a party to the dispute, shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an arbitration proceeding. No legal action with respect to a Party Wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within 20 days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired. All arbitrations shall be subject to the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-201, *et seq.*

(i) Notwithstanding any other provision of this Section 6.6, the Association may, in its sole discretion make any repairs to Party Walls which the Association deems necessary and the cost for such repairs shall be assessed equally against the Units containing benefited by such repairs

unless the repairs are necessitated by willful acts or omissions or negligence of one or more Owner(s) in which case the Owner(s) causing the damage shall pay for all costs of repairs.

## **ARTICLE 7 COMMON ELEMENTS**

### **Section 7.1 General Common Elements.**

(a) A "General Common Element" means a portion of the Common Elements, designated in this Declaration, or on the plat or map, or by the CCIOA, for the general use of all of the Owners.

(b) The following portions of the Property, not platted as individual Units and conveyed to Owners in fee title, are designated as General Common Elements:

- (i) the access and utility easements identified on the Plat, including the access roads within the Project known as Tierra Verde and Tierra Vista ("Common Access and Utility Easements");
- (ii) all sidewalks, curbs, gutters, drainage systems, retaining walls, driveway entrances, exterior lighting and any common parking areas;
- (iii) all landscaped areas and any other areas as may be designated G.C.E. on the Plat;
- (iv) all gazebos; and
- (v) the entranceway, planter boxes, signage and mailboxes.

(c) Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right, with all other Unit Owners, to use and enjoy the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners. There shall be no obstruction of the General Common Elements, nor shall anything be kept or stored on any part of the General Common Elements without the prior written consent of the Association, except as specifically provided herein. No restriction, impairment or interference with any right of ingress or egress provided for in this Declaration shall be permitted at any time without the prior written consent of the Owner thereof. Nothing shall be altered on, constructed in, or removed from, the General Common Elements except upon the prior written consent of the Board of Directors.

**Section 7.2** The Common Elements shall be owned by the Association. Neither an

Owner, group of Owners, nor the Association shall bring any action for partition or division of the Common Elements, nor by act or omission, seek to abandon, encumber, sell or transfer any of the Common Elements. If any Unit Owner, or group of Unit Owners, violates this paragraph, such Owner or Owners agree that this paragraph may be pleaded as a bar to maintenance of such an action for a partition, and further that the Association shall be entitled to personally collect, jointly and severally, from the parties violating this paragraph, the actual attorneys fees, costs and other damages the Association sustains in connection therewith.

**ARTICLE 8**  
**DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

**Section 8.1 Development Rights and Special Declarant Rights.** The Declarant reserves the following Development Rights and other Special Declarant Rights for a period of 10 years after the recording of this Declaration:

- (a) the right to complete or make improvements indicated on the Plat;
- (b) the right to maintain sales offices, management offices and models in Units or on the Common Elements;
- (c) the right to maintain signs on the Property to advertise the sale of the Units;
- (d) the right to use, and to permit others to use, easements through the Common Elements (including both General Common and Limited Common Elements) as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the CCIOA and this Declaration and the right to dedicate any access and utility easements within the Project to public use;
- (e) the right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with the CCIOA;
- (f) the right to amend these Declarations and/or the Plat in connection with the exercise of any Declarant Rights;
- (g) the right to develop the Project in phases, and in any order of phasing, and from time to time, subject additional phases to the provision of this Declaration to include up to 32 units and to expand the Common Elements in connection with same;
- (h) and the right to withdraw units from any particular phasing of the Project;
- (i) the right to modify the configuration of the Units; create fencing and/or trails or paths within the Project and incorporate entrance features and signage as Declarant, in its

discretion, deems necessary; and

(j) the right to abandon and relocate the existing water line, septic and driveway access to Unit 32 and incorporate, serve and connect Lot 32 with future subdivision utilities and access.

No assurances are made by Declarant as to whether Declarant will exercise its Development Rights or the order in which such Development Rights will be exercised. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions. The exercise of Development Rights as to some portions of the Property will not obligate Declarant to exercise them as to other portions. The exercise of the above reference special Declarant rights or rights reserved to Declarant shall not require the consent or approval of the Association or its member.

**Section 8.2 Limitations on Development Rights and Special Declarant Rights.** Unless sooner terminated by a recorded instrument signed by the Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant for a period of not to exceed ten (10) years after the date of recording of this Declaration or up to the date of the sale of all of the maximum number of Units within the Project, whichever shall occur first.

## **ARTICLE 9 ALLOCATED INTERESTS**

**Section 9.1 Allocated Interests.** Each developed Unit shall be entitled to one vote in the Association irrespective of the size of the Unit. Each developed Unit shall have the same Common Expense liability. A developed Unit is one in which a certificate of occupancy has been obtained.

**Section 9.2 Determination of Allocated Interest.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this declaration, shall be divided equally among the Units included in the Property under this Declaration from time to time. Accordingly, at any given time, an Owner's share of Common Expenses shall be determined as a fraction, the numerator of which is the number of Units owned by Owner and the denominator of which is the total number of Units within Tierra Vista Village. Any Common Expenses or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited as provided in Section 6.3.

## **ARTICLE 10 RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY**

**Section 10.1 Use and Occupancy Restrictions.** Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements:

(a) Residential Use. All Units shall be used exclusively for single family residential purposes only and shall not be used for any business, manufacturing, or commercial purpose whatsoever; provided, however, if the appropriate zoning or land use approval so allows and if prior written approval of the Association is obtained, an Owner may use a specifically designated portion of his or her Unit as a home business or office. A home occupation may be carried on provided:

(i) that the business or commercial usage does not interfere with the residential character of the dwelling or neighborhood, and is secondary to use as a dwelling place;

(ii) that the proposed usage causes no undue parking, traffic or telephone problems;

(iii) that such usage exhibit no outward appearance of business or commercial use; and

(iv) that no more than one (1) person not in permanent residency at the Unit is employed in connection with such business be on the Property at one time.

(b) Improvements. No improvements or structural alterations, including changing the exterior color, configuration or facade constructed on any Unit, shall be made except only as approved by the Board of Directors, or other entity to whom review responsibilities have been assigned as provided herein. For purposes of this Declaration, improvements shall mean any changes, alterations, modifications or improvements to residential units, garages, fencing, parking areas, plantings (including landscaping within L.C.E.s), driveways, walkways, signs, balconies, decks and any change in the exterior colors of the doors or roofs of the residential unit. Any proposed improvements, landscaping or alterations to any Unit shall match the appearance, color, and materials of the other Units and landscaping within the Property. The Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within 60 days after such request, and failure to do so within the stipulated time shall constitute approval by the Board of Directors of such proposed structural addition, alteration, or improvement.

(c) Signs. No signs, billboards, posterboards, or other advertising structure of any kind shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Association and City of Durango and are in compliance with the restrictions imposed by this Declaration. All permitted signs located on the Property shall comply with applicable local sign codes. Declarant, at its discretion, may erect promotional signs and ordinary real estate "For Sale" signs.

(d) Completion of Construction. All construction, reconstruction, alterations or improvements, approved by the Board of Directors, shall be prosecuted diligently through completion and shall be completed within six months of the commencement thereof.

(e) Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles, recreational vehicles, or motor vehicles of any kind, shall not be stored or parked within the property. Abandoned or inoperable vehicles shall be defined as any vehicle which either is incapable of legal operation upon a public highway or has not been driven under its own propulsion for a period of 14 days or longer. The Association shall have the right to remove or tow away any vehicle that is parked within or on the Road. The cost for any removal or towing shall be charged to the responsible Owner.

(f) Noise. No exterior horns, whistles, bells, wind chimes, or other sound devices, except security devices used exclusively to protect the security the improvements on any Unit, shall be placed or used on any Unit.

(g) Nuisance. No obnoxious, offensive or illegal activity shall be carried on within the property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise, lights, sounds, odors or other nuisance shall be permitted to exist or operate upon the property so as to be offensive or detrimental to any other part of the property or its Owners or occupants. Barking dogs shall be deemed a nuisance.

(h) Hazardous Activities. No activities shall be allowed or conducted on the property which are or might be unsafe or hazardous to any person or property, nor shall any inherently unsafe or hazardous materials be stored on the property.

(i) Maintenance and Repair. The Owner of any Unit shall keep his or her Unit in good order, condition and repair and in a clean and sanitary condition. If the Unit Owner fails to maintain his or her Unit, (and any Limited Common Elements allocated to the Unit), or any part thereof or improvements thereon, in good repair, the Board of Directors may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by Owner within 30 days of the mailing of such notice, the Board of Directors, at its option, may obtain an injunction against the Owner to force completion of the needed work. In the alternative, the Board of Directors may contract with a third party for the needed work and assess the cost of same against the Owner pursuant to the assessment provisions contained herein.

(j) Animals. Except for common household pets, no livestock, poultry, or exotic animals may be kept on the property unless with the permission of the Board of Directors. Dogs shall be inside dogs. No dog-runs shall be permitted, and all applicable leash laws strictly followed. There shall be no more than two cats or two dogs and no combination of cats and dogs greater than three in number. No pets shall be bred, or maintained for commercial purposes. No animals shall be allowed to run free, or to otherwise constitute a nuisance to any other Unit Owners and Owners shall "clean up" after their pet at all times and in all places within the Project. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.

(k) Trash. Trash containers shall be stored in the garage and out of site with the exception of the day of pickup. No trash, ashes, or other refuse or debris may be thrown, dumped, stored or accumulated on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any other person except as approved by the Association. Waste materials, garbage, and trash shall be kept in sanitary containers and shall be enclosed and screened from public view and protected from disturbance and shall be disposed of with reasonable promptness. The Owner of any Unit subject to these covenants shall keep the premises free of trash, refuse, or debris of any kind, whether said Unit is vacant or occupies.

(l) Vehicle Parking. No mobile home, trailer, automobile, boat, truck pickup, camper, or other vehicle may be used for temporary or permanent sleeping or living purposes. Overnight parking or storage of recreational vehicles, mobile homes, trailers, campers or boats shall not be permitted on the Property, except in driveways. Notwithstanding the foregoing, no recreational vehicle may remain in a driveway for a period of more than 48 hours per month.

(m) Storage Sheds. No storage sheds or structures of any kind shall be erected or maintained on the Property.

(n) Antennae. No exterior radio, television, microwave or other antennae or antennae dish or signal capture or distribution device shall be permitted or installed on the Property, except as approved by the Association, and unless it is screened from view on all sides and any such screening conforms with the terrain and environment. With the prior approval of the Association, the small (18" – 24") TV and computer dish antennae may be located on the roof areas to optimize reception.

(o) Rentals. No room or rooms in any unit or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing herein contained however, shall be construed as preventing the renting or leasing of an entire townhome as a single residence to a single family.

(s) Fencing. All fencing located within the Property shall be uniform in style, material, color and general appearance as approved by the Board of Directors. The maximum height of any fence shall be five feet as measured from the tallest point above the ground. All fencing must be located within the boundary of the backyard L.C.E area appurtenant to that Owner's Unit. Owners, at their expense, may have the Declarant construct a fence within their designated L.C.E area. If the Declarant is unavailable, the Owner may cause the Board to select an approved contractor to construct a fence on behalf of the Owner.

(t) No Parking On Access Streets. In light of fire safety considerations, no parking shall be permitted along access streets within the Property except in the designated common parking areas.

**Section 10.2 Restrictions on Alienation.** A Unit may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§38-33-110 to 113 of the COA.

## **ARTICLE 11 ENFORCEMENT, AMENDMENT AND REVOCATION**

**Section 11.1 Enforcement.** These covenants, conditions and restrictions may be enforced as provided hereinafter by the Association, or by separate action by any individual Owner after notification to the Board. In the event that any covenant shall be violated, the offending party shall be notified in writing by certified mail, return receipt request, by any enforcing party as defined above. Such notification shall identify the covenant which has been violated and shall notify the offending party that he shall have a maximum of five (5) days to remedy such violation, or alternatively, in the event such violation cannot be remedied within five (5) days, he shall have a period of five (5) days within which to initiate procedures reasonably calculated to remedy such violation, and shall thereafter be required to diligently pursue such action until the violation has been remedied. In the event the violation continues and no action is taken to remedy such violation within the aforementioned five (5) day period, enforcement may be by any proceeding at law or in equity, and the Association or Owner may seek an order to restrain the violation or recover damages, inclusive of reasonable attorney's fees. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

**Section 11.2 Amendment.** The provisions of this Declaration may be amended or terminated, in whole or in part at any time and from time to time, by an instrument (which instrument may be executed by ratification in counterpart referring to the amendment as recorded, in which event all of such counterparts shall be taken as one and the same instrument of amendment), approved as follows: Any amendment to or termination of this Declaration will require the prior written approval of the individual Owners owning not less than 67% of the aggregate ownership interests of the sold Lots and of the First Mortgagees holding First Mortgages on not less than 67% of the mortgaged Lots; provided, however, that any such action (a) terminating this Declaration in full or (b) changing the undivided nature of the Common Elements except as otherwise provided herein shall require the prior written approval of all First Mortgagees. To be effective, all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of La Plata County, Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

**Section 11.3 Revocation.** This Declaration shall not be revoked unless the Owners representing an aggregate interest of 67% or more consent and agree to such revocation by instrument(s) duly recorded.

**Section 11.4 Term.** The term of this Declaration shall be perpetual.

## **ARTICLE 12 INSURANCE**

**Section 12.1 Insurance.** The Association shall, on behalf of the Owners: (i) provide and keep in force, for the protection of the Association, its officers and directors, and all the Owners and First Lienors, Commercial General Liability insurance against claim for bodily injury or death or property damage occurring upon or in the Limited Common Elements or General Common Elements in an amount of not less the \$5,000,000.00 in respect to bodily injury and/or property damage arising out of one accident or disaster, and if higher limits shall at any time be customary to protect against possible tort liability, such higher limits shall be carried; (ii) carry insurance required by CCIOA and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the General Common Elements and Limited Common Elements, if any; and (iii) assure that all such insurance shall conform with the requirements set forth in Section 313 of CCIOA.

**Section 12.2 Common Expenses.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses. All insurance required to be carried under this paragraph shall be carried in favor of the Association, the Owners and all First Lienors, as their respective interests may appear.

**Section 12.3 Owner Insurance.** An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Each Owner shall be responsible for all insurance covering loss or damage to the personal property of the Owner and the interior fixtures and equipment within their Unit, and liability for injury, death or damage occurring outside his Unit. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

**Section 12.4 Fidelity Insurance.** In addition, if responsibility for handling funds is delegated to a Manager, fidelity insurance or fidelity bonds may be obtained by or for the Manager, and its officers, employees and agents, as applicable, if such fidelity insurance or bond is available at a reasonable cost. Any such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions.

**Section 12.5 Workmen’s Compensation Insurance.** The Executive Board shall obtain worker’s compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

## **ARTICLE 13 DAMAGE OR DESTRUCTION**

**Section 13.1 The Role of the Executive Board.** In the event of damage or destruction to

all or any part of any General Common Elements and any improvements existing thereon, or other property covered by insurance written in the name of the Association (the "Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property unless any of the provisions of Section 313(9)(a) of CCIOA are met.

**Section 13.2 Estimate of Damages or Destruction.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

**Section 13.3 Repair and Reconstruction.** As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

**Section 13.4 Funds for Repair and Reconstruction.** The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and First Lienors.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 13.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

**Section 13.5 Disbursement of Funds for Repair and Reconstruction.** The insurance held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contribution such Owner made as Special

Assessments, the remainder to be divided among the Units, first to the First Lienors, and then to the Owners, as their interests appear.

## **ARTICLE 14** **CONDEMNATION**

**Section 14.1 Rights of Owners.** When all or any part of the General Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the General Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**Section 14.2 Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such a taking shall be payable to the Association for the benefit of the Owners and First Lienors and, unless otherwise required under the Act, the award shall be disbursed as follows:

(a) if the taking involves a portion of the General Common Elements on which improvements have been constructed, then, unless within 60 days after such taking Declarant and Owners who represent at least 67% of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such General Common Elements so taken on the remaining land included in the General Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Association. If such General Common Elements are to be repaired or restored, the provisions in Articles 13 and 14 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any General Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed equally among the Units, first to the First Lienor and then to the Owners, as their interests appear.

**Section 14.3 Complete Condemnation.** If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate provided that the approval is first obtained of 51% of all First Lienors of Units (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the General Common Elements shall be distributed as provided in Section 14.2 above.

## **ARTICLE 15** **EASEMENTS**

**Section 15.1 Recording Data.** All easements, and licenses of record to which Tierra

Vista Village is presently subject are described herein or on the Plat. In addition, Tierra Vista Village may be subject to other easements or licenses granted by the Declarant pursuant to Section 8.1 in this Declaration.

All necessary easements are hereby declared for maintenance and snow removal upon the driveways, and parking areas within the Property. Such maintenance and snow removal shall be deemed a Common Expense.

**Section 15.2 Development Rights.** Declarant reserves for itself, its agents, employees and contractors, to enter upon the Property (including General and Limited Common Elements) to do what is necessary and advisable in connection with the development of access, utilities, sidewalks and other general improvements necessary for Declarant to successfully complete the development of the Property. This general development right reserved by Declarant shall not extend to any Unit after the closing of the Unit to an Owner.

**Section 15.3 Owner's Easements of Access and Enjoyment.** Every Owner has, and the Declarant hereby grants, a perpetual, non-exclusive easement for access and utilities to and from his or her Unit for the purpose of access to the subdivision roads. Every Owner shall have, and the Declarant hereby grants, a perpetual, non-exclusive right and easement in common with all of the other Owners to reasonable use and enjoyment of the General Common Elements, subject to regulation by the Board and restrictions as stated in Article 10. The easements granted hereunder are appurtenant to and shall pass with the title to every Unit, subject to the provisions set forth in this Article. Nothing in this Declaration or the other Association Documents shall be construed as a dedication of the General Common Elements or Common Access and Utility Easements to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent and express written agreement to that effect. The General Common Elements and Common Access and Utility Easements are private amenities that are for the common use, benefit, and enjoyment of the Owners and their permitted guests only.

**Section 15.4 Association's Easement.** Declarant hereby grants the Board of Directors of the Association an easement over, across, and under each Unit to exercise any right held by the Association under this Declaration. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner except in cases of emergency.

**Section 15.5 Easement for Encroachments.** To the extent that any Unit, Limited Common Element, or Common Element encroaches on any other Unit, Limited Common Element, or Common Element, a valid easement for the encroachment exists. This easement does not relieve a Unit Owner of liability in the case of willful misconduct.

**Section 15.6 Construction; Declarant's Easement.** The Declarant reserves the right to perform, or cause to perform, warranty work, repairs and construction work as to any Units or the 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 or caused by the Declarant without the consent or approval of the Association. 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 the City of Durango and adjoining property owners.

## **ARTICLE 16 ALTERNATIVE DISPUTE RESOLUTION**

**Section 16.1 Alternative Dispute Resolution.** The purpose of the Declaration is to establish a harmonious Common Interest Community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to this Declaration, or a breach thereof, or any other dispute between (1) the Declarant and (2) the Association or any Owner Lot shall be resolved as set forth in this Article.

**Section 16.2 Direct Communication.** The parties to the disagreement shall set forth their respective positions in the dispute in correspondence. Each party shall respond within seven days after receipt of a letter from the other until agreement is reached.

**Section 16.3 Mediation.** If the dispute cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. Both parties shall participate in the mediation in good faith until the dispute is resolved for a period not to exceed thirty days with the consent of all parties. The cost of the mediation shall be divided equally among the parties.

### **Section 16.4 Arbitration.**

(a) **Method.** If the dispute cannot be resolved through mediation, either party may request appointment of one or more neutral and properly credentialed arbitrators with expert knowledge and experience regarding the subject in dispute. The initiating person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The initiating person shall be responsible for all filing requirements and the payment of any fees according to the rules of the applicable regional office of the American Arbitration Association. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty days after the conclusion of the presentations of the parties and receipt of requested materials and documents. Any dispute shall be settled by binding arbitration administered by the American Arbitration Association.

(b) Costs. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any attorney's fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.)

(c) Binding Nature; Applicable Law. The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

(d) Location. The alternative dispute resolution proceeding shall be held within La Plata County, Colorado unless otherwise mutually agreed by the parties.

(e) Sole Remedy; Waiver of Judicial Rights. The Declarant, the Association, and each Owner of a Lot expressly consent to these procedures established in this Article as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any dispute contemplated by this Article in any court of law or equity, and any right to trial by judge or jury. If a dispute involves the Declarant or the Association, no person shall file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the land owned either by the Declarant or the Association.

(f) No Agreement by Association. Notwithstanding any provision in this Article 17 to the contrary, the Association shall have the right to enforce all covenants set forth herein, as provided in this Declaration and the Act and the Association does not agree to mediate or arbitrate its claims against Owners in such enforcement actions.

## **ARTICLE 17 COMMON AREA IRRIGATION**

To the extent that the Association is permitted by the City of Durango to use the existing well located in the northeast portion of the Property, it shall be responsible for the maintenance and repair of same. In the event that the Association is entitled to use of the water from this well, the Board may approve the use of well water for the purposes of irrigation of common area landscaping located within the Tierra Vista Village. In this regard, the Association would have the full discretion to monitor the well usage and, to the extent the well (in the opinion of the Board) does not supply sufficient amounts of water for subdivision purposes, the Board may determine that it should obtain an additional water tap from the City of Durango for said purposes.

## **ARTICLE 18 GENERAL PROVISIONS**

**Section 18.1 Severability.** Invalidation of any one of these covenants by judgment or court decree shall not affect or impair the terms, provisions and conditions of any other covenants contained herein, which covenants shall remain in full force and effect.

**Section 18.2 Covenants Running with the Land.** All provisions of this Declaration and Exhibits attached hereto and amendments thereof shall be construed as covenants running with the land, and or every part hereof and interest therein, including but not limited to every Unit and appurtenances thereto, and every Unit Owner and occupant of the Property, or any part thereof, or of any interest therein, and his or her heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any amendments thereof. The subjection of the Property or surrounding properties to zoning laws and regulations shall not then or thereafter cause any provisions of this Declaration to terminate.

**Section 18.3 Conflict Between Documents.** In the event of any conflict between the provisions of this Declaration, or the Articles of Incorporation or the Bylaws of the Association, the provisions of the Articles of Incorporation shall control. In the event of any conflict between the Declarations and the Bylaws of the Association, the Declarations shall control. In the event of any conflict between the Declarations and the Plat, the Declarations shall control.

**Section 18.4 Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

**Section 18.5 Notices.** Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

**Section 18.6 Binding Effect.** Declarant, Owners, lessees, Mortgagees, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying Tierra Vista Village, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations and agreements lawfully made by the Association.

**Section 18.7 No Representations or Warranties.** No representations or warranties of

any kind, express or implied, shall be deemed to have been given or made by Declarant or its officers, directors, agents or employees in connection with any portion of the Property, or any improvement thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

**Section 18.8 Transfer of Declarant Rights.** It is anticipated that Lot 1 which comprises the Property subject to these Declarations shall be transferred and conveyed in the future to 3S, LLC such that 3S, LLC shall be the sole owner of all of the real property comprising Tierra Vista Village and any and all Declarant development rights and special Declarant rights set forth herein shall automatically be transferred along with the Property to 3S, LLC.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants, Conditions and Restrictions of the Tierra Vista Village to be executed this \_\_\_\_ day of \_\_\_\_\_, 2005.

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Signature Page for  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF TIERRA VISTA VILLAGE

**3S Investment, LLC**

**By:** \_\_\_\_\_  
Steven Rafalo

**By:** \_\_\_\_\_  
Stewart Rafalo

**By:** \_\_\_\_\_  
Samuel McCullough

**3S, LLC**

**By: Samuel E. McCullough Enterprises,  
Inc.**

**Its: Manager**

**By:** \_\_\_\_\_  
**Samuel E. McCullough**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 1 and 2 of AMENDED PLAT COLLEGE ESTATES, according to the plat thereof filed for record October 14, 1981 as Reception No. 461986.