

**FIRST AMENDMENTS  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF THE TOWN HOMES AT RED HAWK**

These Amendments to the Declaration of Covenants, Conditions and Restrictions of the Town Homes at Red Hawk (hereafter the "Declaration") are made on the date set forth below, by the Townhomes at Red Hawk, L.L.C. ("Declarant") for the Town Homes at Red Hawk Homeowners Association, Inc. (hereafter the "Association") with the express consent of at least sixty-seven (67%) of the votes in the Association as of this date. lap

**WITNESSETH:**

WHEREAS, the Declarant, with the requisite consent of at least sixty-seven (67%) of the votes in the Association, pursuant to Article XII, Section 6 of the Declaration as recorded in the Public Records of Douglas County, Colorado does hereby amend certain portions of said Declaration as follows:

1. Pursuant to the terms and agreements set forth in the Assignment/Assumption of Rights and Liabilities, attached and recorded herewith as Exhibit A, Article I, Section 15 is amended as follows:

"Declarant" means Townhomes at Red Hawk, L.L.C., and any other Person or group of Persons acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

- a. As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser; or
- b. Reserves or succeeds to any Special Declarant Right.

2. Article XIII is added as follows:

**ARTICLE XIII.**

**CONSTRUCTION CLAIM PROCEDURES**

1. Claims. All claims, disputes and other controversies arising out of or relating to:
  - (a) the Agreement for Purchase and Sale between Declarant and any Owner;

- (b) all property at the Town Homes at Red Hawk, including, but not limited to, all Common Elements, Lots, Units, and Improvements ("Property");
- (c) the purchase of the Property;
- (d) the interpretation, application or enforcement of this Declaration;
- (e) the soils of any property that lie within the Town Homes at Red Hawk;
- (f) the land development, design and/or construction of the Property within the Town Homes at Red Hawk and/or any alleged defect therein;
- (g) the rights, obligations and duties of any party under this Declaration;
- (h) the rights, obligations and duties of the parties under any Limited Warranty Agreement and/or Structural Limited Warranty Agreement between the Declarant and any Owner and/or the Association; or
- (i) any breach of any of the foregoing referenced documents;

all of which are hereinafter referred to as a "Claim," shall be resolved by mandatory binding arbitration.

2. Written Notice. The Association shall be required to give written notice to the Declarant specifying the particular defects which are the subject of the Claim, including identification of the affected Property and specifying the facts and circumstances supporting the Claim. Within thirty (30) days following receipt of the notice, the Declarant shall make a written request to inspect the same in order to evaluate the Claim. Such request shall have the effect of tolling all statutes of limitations to a noticed claim until thirty (30) days after the Declarant delivers written notice to the Association canceling the tolling.

3. Declarant Inspections. The Association shall allow the Declarant to inspect the Property identified in the Association's notice. A majority of the Board of Directors shall be required to meet and confer with the Declarant on at least one occasion to discuss the Claim. Either party may be represented at the meeting by attorneys and independent consultants. The Association shall be required to make arrangements for the Declarant, at the Declarant's cost, to do reasonable destructive testing if the Declarant deems such testing necessary, provided that the Declarant shall pay all costs to restore all Property to its original condition and indemnify the Association against any liability for such destructive testing. All inspections and destructive testing must be completed within thirty (30) days following the Property being made available.

4. Declarant Settlement Proposal. Within thirty (30) days after completion of the inspection and destructive testing, the Declarant shall submit a written statement to the Association setting forth the Declarant's proposed settlement of each allegation of the Claim and the reasons therefore, and stating whether the Declarant proposes to do any necessary remedial work or to pay the Association a cash sum lieu thereof. A majority of the Board of Directors shall be required to meet and confer with the Declarant on at least one occasion to discuss the proposed settlement, if any. Either party may be represented at the meeting by attorneys or independent consultants. If the Declarant does not deliver such a written statement to the Association within thirty (30) days following the completion of the inspection and destructive testing, the Association shall have the right to institute mandatory binding arbitration against the Declarant in accordance with the procedures set forth herein.

5. Approval Required. The approval of seventy-five (75%) of the votes in the Association must be obtained before the Association shall have the power to institute mandatory binding arbitration against the Declarant. Such approval must be obtained in accordance with the requirements of this Article.

6. Notice and Quorum for Claim. Written notice of any meeting of Members which includes a vote to conduct mandatory binding arbitration shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include the following information:

- (a) A statement regarding the nature of the Claim. Such statement shall include, without limitation, the name(s) of the proposed parties against whom the Claim is asserted, the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and
- (b) A copy of the Declarant's written response thereto, including any settlement proposal; and
- (c) A good-faith estimate of the costs and fees, including the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board of Directors proposes to have prosecute the Claim on behalf of the Association; and
- (d) A statement advising Members that the costs and fees of prosecuting any Claim may substantially increase the amount of assessments payable by the Owners to the Association; and

- (e) A good-faith estimate of the manner in which any moneys reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board of Directors proposes to have prosecute the Claim on behalf of the Association; and
- (f) A statement advising Members of their duty to disclose to prospective purchasers and lenders the Claim which the Association will assert against the Declarant; and
- (g) A statement that the recovery, if any, may not result in receipt of funds to pay all costs of repairing or remedying the Claim as estimated by experts retained by the Association; and
- (h) All terms and provisions of the agreement between the Association and the attorney(s) the Board of Directors proposes to have prosecute the Claim.

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast sixty-seven percent (67%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim.

7. Required Form of Proxy or Ballot. Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement:

“Despite the fact that my assessments may be significantly increased by the costs and fees associated with the proposed claim, I/we APPROVE the authority of the Association to bring such claim.”

8. Liability of Directors or Officers for Failure to Maintain an Action Against the Declarant. No officer or director of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion such case of action if the following criteria are satisfied:

- (a) the officer or director was acting within the scope of his/her duties;
- (b) the officer or director was acting in good faith; and,
- (c) the act or omission was not willful, wanton or grossly negligent.

9. Alternative Dispute Resolution. Any and all Claims, upon the demand of the Association or the Declarant, shall be submitted to mandatory binding arbitration, subject to the following requirements:

- (a) the arbitrator must be a person qualified, either with applicable industry experience or legal experience with respect to the Claim, to consider and result the applicable claim;
- (b) if the parties cannot agree upon an arbitrator, either party may petition the Douglas County District Court to appoint such arbitrator;
- (c) the fees and costs of the arbitration shall be borne equally by the Association and the Declarant;
- (d) the arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing, and retention of independent consultants;
- (e) the arbitrator shall hold at least one hearing in which the parties, their attorneys, and expert consultants may participate;
- (f) the arbitrator shall issue a written report determining all claims, including any defenses raised by the Declarant, and which shall include a binding arbitration award;
- (g) the Declarant shall have the right to allow subcontractors and design professionals to participate in the arbitration proceedings to determine indemnification rights and obligations; and,
- (h) any arbitration shall be determined under the American Arbitration Association, Commercial Arbitration Rules with Expedited Procedures in effect on the date hereof, as modified by this Article. Any issue about whether a claim is covered by this Article shall be determined by the arbitrator. There shall be no substantive motions or discovery, except the arbitrator shall authorize such discovery as may be necessary to insure a fair private hearing, which shall be held within one hundred twenty (120) days of the demand, and concluded within three (3) days. These time limits are not jurisdictional. The arbitrator shall apply substantive law of Colorado, but shall not have the power to award punitive damages.

10. Exclusive Remedy. The provisions contained in this Article shall be the sole and exclusive remedy that the Association shall have against the Declarant for any and all Claims. Should the Association commence litigation or any other action against the Declarant, in violation of the terms of this Article, the Association shall reimburse the

costs and expenses, including attorneys' fees, incurred by the Declarant seeking dismissal of such litigation or action.

11. Conflict with other Articles. The provisions contained in this Article shall not be construed to impair the Association's ability to institute a lawsuit, counterclaim or cross-claim pursuant to other Articles in this Declaration. The intent of this Article is to provide the process by which the Association must pursue any Claim, as defined herein, against Declarant. To the extent that this Article may conflict with or be inconsistent with other Articles, the terms or provisions of this Article shall control and govern.

IN WITNESS WHEREOF, these First Amendments to the Declaration of Covenants, Conditions and Restrictions of the Town Homes at Red Hawk have been consented to by the required number of votes in the Association, and executed by the Declarant for the Town Homes at Red Hawk Homeowners Association, Inc. on the day and year set forth below.

DECLARANT:

Townhomes at Red Hawk, L.L.C.

By: *Charles A. Meale*

Title: *Mgr.*

STATE OF COLORADO )

COUNTY OF *Arapahoe* ss.

The foregoing instrument was acknowledged before me this *20<sup>th</sup>* day of *July*, 2001, by *Charles A. Meale* as *Mgr.* of Townhomes at Red Hawk, L.L.C.

Witness my hand and official seal.

My commission expires *My Commission Expires Dec. 9, 2002*

*[Signature]*  
Notary Public

