

TREASURY POINT TOWNHOMES DECLARATION

This Townhome Declaration ("Declaration") is made this 1<sup>st</sup> day of February, 2000 by Mt. Crested Butte Development, LLC, a Colorado limited liability company ("Declarant").

Recitals

A. Declarant is the owner of certain improved real property situated in the County of Gunnison, State of Colorado, which is more particularly described on attached Exhibit A ("Property").

B. Declarant desires to divide said real property and the improvements thereon into fifteen (15) separate townhome parcels in two phases to be designated as Units 1, 2, 3, 4, 5, 6 and 7 ("Phase 1") and Units 8, 9, 10, 11, 12, 13, 14 and 15 ("Phase 2"), which are more particularly described on the plat(s) of Treasury Point Townhomes ("Plat") referred to below.

C. Declarant will convey Townhome Units as townhomes connected by party walls and subject to certain protective covenants, conditions, restrictions, reservations, lien rights and charges as set forth in this Declaration and on the Plat.

Now therefore, Declarant hereby declares that all of such Units shall be held, sold and conveyed subject to the following easements, reservations, restrictions, liens, charges, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Description of Unit

1.1 Every instrument affecting the title to a Unit may describe that Unit as follows:

Unit \_\_\_\_\_, Treasury Point Townhomes, according to the plat thereof bearing Reception No. 499751 and the Townhome Declaration pertaining thereto bearing Reception No. 499752 of the Gunnison County, Colorado records, Town of Mt. Crested Butte, County of Gunnison, State of Colorado.



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1.2 Such method of description shall be sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect the Unit and all other appurtenant properties and property rights and incorporate all of the rights, duties, limitations and burdens incident to ownership of a Unit as described in this Declaration.

1.3 Upon construction of Phase 2, Declarant shall record a supplemental plat describing and defining the Units in Phase 2 and an amendment to this Declaration allocating according to square footage the percentage share of Common Expenses and the vote in the affairs of the Association allocated to each Unit. Such supplemental plat and Declaration amendment shall be effective upon Declarant's execution thereof without the approval of any owner or holder of any interest in a Phase 1 Unit.

## ARTICLE II

### Party Walls

2.1 The walls that are constructed as a common part of adjacent townhome Units and which are located between such townhome Units constitute party walls, as shown on the Plat of Treasury Point Townhomes. Except as is otherwise provided herein, the cost of reasonable repairs, maintenance and replacement of each party wall shall be the joint expense of the owners of the Units adjacent to such wall. The term "owner" as used herein shall mean the record owner, whether one or more persons or entities, of a fee simple title to such Units.

2.2 Except as otherwise provided herein, the cost of repairs and maintenance of the finished surface of the party wall located within a Unit shall be the sole expense of the owner of that Unit.

2.3 If the party wall is damaged or destroyed by the act, default or negligence of the owner of a Unit, such owner shall rebuild said wall and shall compensate the other owner for any damage to the property of the owner of a Unit adjacent to such wall (including, but not limited to, the finished surface of the party wall located within the Unit of the other owner).

2.4 To the extent that damages to a party wall are covered by insurance, the insurance proceeds shall be used and applied to repair, restore and replace the party wall. Any deficiency shall be the joint expense of the owners, without prejudice, however, to the right of any owner to demand a larger contribution from the other owner under any rule of law regarding liability for negligent or willful acts or omissions.



2.5 Notwithstanding any provision of this Declaration to the contrary, an owner who by his negligent or willful act or omission causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

2.6 An owner shall have the right to maintain and repair any utility installations located within a party wall and in so doing, shall restore the party wall to its original condition. Notice shall be given to the adjoining owner prior to undertaking any such action. All such undertakings will be done so as to avoid or minimize damage to the adjoining owner's property.

### ARTICLE III

#### Administration and Management

3.1 The operation and management of Treasury Point Townhomes shall be undertaken by a Colorado non-profit corporation which shall be formed and operated as a Unit owners' association on behalf of all owners ("Association"). Declarant shall convey the common areas shown on the Plat to the Association, which shall own and administer such common areas for the benefit of all Unit owners. The Association shall have the right to adopt and enforce reasonable rules and regulations regarding the use of Units and common areas and facilities on condition that such rules and regulations are not inconsistent with this Declaration or the Plat.

3.2 The Association shall be responsible for managing Treasury Point Townhomes and for levying assessments for common expenses which common expenses shall include but not be limited to snow removal, common wall, common roof or common utilities, hot tub and common facilities, driveway/parking area maintenance and plowing, liability insurance, fire and extended insurance, landscaping and care of grounds, common lighting, exterior decoration, painting, repairs and renovations, refuse collection, water and sewer charges, wages, legal and accounting fees, management fees and all expenses and liabilities incurred under or by reason of this Declaration.

3.3 The Association shall levy periodic or special assessments to cover common expenses, the payment of any deficit remaining from a previous period and the creation of a reasonable contingency fund or other reserve or surplus fund as well as payment of all other costs and expenses relating to Treasury Point Townhomes.

3.4 The Association shall have the right to utilize the lien provisions of Article VIII, below, and to initiate all reasonable efforts, in court or otherwise, to collect assessments for common expenses from owners, who shall be personally responsible for such common expenses and the assessments therefor.

3.5 The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against such Unit 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.

3.6 The Association and/or the owner of any Unit shall have authority to enforce any provision of this Declaration.

3.7 If any Unit is owned by more than one person, or by a partnership, joint venture, corporation or other such entity, the owners thereof shall designate to the Association, in writing, the name and address of the agent of the owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed. Upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such owners.

3.8 The common expense liability and votes in the Association allocated to each Unit are set forth in Exhibit B. The interests allocated to each Unit have been calculated as follows:

3.8.1 the percentage of liability for common expenses, on the basis of Unit size; and

3.8.2 the number of votes in the Association, on the basis of Unit size.

#### ARTICLE IV

##### Insurance

4.1 The Association shall pay for and maintain at all times:

4.1.1 Insurance coverage against loss or damage by fire and extended coverage perils in an amount not less than the full replacement value of all Treasury Point Townhomes improvements, including all party walls and common areas and facilities; and

4.1.2 Liability insurance with a combined single limit of at least \$1,000,000.

4.1.3 The Association shall furnish proof of such insurance coverage to any owner upon request.

4.2 In addition, an owner may, if he desires at his own expense, carry insurance for homeowner's liability, theft, and other insurance covering personal property damage or loss.

## ARTICLE V

### Architectural Control

5.1 No building, fence, structure or improvement of any kind shall be erected, placed or altered on any Unit or anywhere else on the Property until the building plans, specifications and plan showing the nature, kind, shape, height, materials and location of such building, fence, structure or other improvement shall have been submitted to and approved in writing by the Association, which approval shall not be unreasonably withheld.

5.2 The selection of color, type of paint, exterior decoration, and any exterior materials shall be subject to the written approval of the Association, which approval shall not be unreasonably withheld.

5.3 To the extent reasonably practicable, the Association shall endeavor to maintain a uniform exterior appearance to the entire Treasury Point Townhome project.

## ARTICLE VI

### Use Restrictions

6.1 The Units shall be used for residential purposes only. No structures of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any portion of said Property at any time as a residence, either temporarily or permanently, or for the storage of materials or equipment, except to the extent such materials or equipment may be required for the repair of a building or other work being performed on the Property.

6.2 No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Property, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes. No more than two pets of the same species shall be allowed in any townhome Unit. Such household pets shall be adequately maintained and cared for in order to avoid constituting a nuisance to the adjoining owner(s).



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6.3 Owners of dogs shall:

6.3.1 Not allow their dogs to bark or otherwise disturb, threaten, scare, injure or otherwise bother any person or any animal;

6.3.2 Immediately clean up the dog's waste; and

6.3.3 At all times control their dogs by leash or voice command.

6.4 No Unit shall be used in any way or for any purpose that may endanger the health or unreasonably disturb, by noise, dust, fumes, vibration or otherwise, the owner or occupant of another townhome.

6.5 All fixtures and equipment installed within a townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a townhome, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament or do any act or allow any condition to exist that will adversely affect any other townhome or its owner.

6.6 The exterior of each Unit shall be kept and maintained in a neat, clean and orderly condition and appearance at all times. No personal property (except motor vehicles) shall be stored on the outside part of any Unit.

6.7 The Association shall remove snow from around the ground floor windows at the rear of each Unit with sufficient frequency to maintain at all times unrestricted emergency egress through each such window.

## ARTICLE VII

### Easements

7.1 Each Unit shall be subject to an easement for encroachment created by construction, settling and overhang as designed or constructed by Declarant, and a valid easement for such encroachment and for the maintenance of same shall and does exist. If the townhome building is partially or totally destroyed and then rebuilt, the owners of the Units agree that minor encroachments of parts of the adjacent townhouse due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.



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7.2 There is hereby created a nonexclusive blanket easement upon, across, over and under all of Units and the improvements situated thereon, in favor of the Association for the benefit of all owners, for the installation, replacement, repair and maintenance of all utilities and common facilities including but not limited to water, sewer, gas, telephone, electricity and cable television, together with the lawn sprinkler system and parking areas.

7.3 There is hereby created a nonexclusive easement for ingress and egress and parking for the benefit of all owners, upon, over and across the common parking/driveway area of Units depicted on the Plat of Treasury Point Townhomes. No parking of vehicles shall be allowed on the common driveway or parking/driveway area so as to impede access thereto or to any Unit.

## ARTICLE VIII

### Remedy for Nonpayment

8.1 If any common expense of an owner or any assessments or other charge levied by the Association is not paid within thirty (30) days after notice thereof is given, such amount shall, upon recording by the Association of a lien statement in the office of the Gunnison County Clerk and Recorder, become a lien upon the townhome of the nonpaying owner and shall continue to be such a lien until fully paid. This lien shall be superior to the lien of any first mortgage or first deed of trust and shall be enforceable in an action for the collection of a debt and to enforce the aforesaid lien by all methods available the enforcement of such lien, including foreclosure by an action brought in the name of the Association in a like manner as foreclosure on a mortgage under the statutes of the State of Colorado.

8.2 The lien provisions of this Declaration shall not bar the Association or an owner from seeking such other injunctive or monetary relief as may be allowed at law or in equity. All remedies shall be cumulative.

8.3 The Association shall be entitled to recover all costs, including reasonable attorneys' fees and costs, incurred in collecting any assessments or charges levied by the Association or in enforcing any provision of this Declaration.

## ARTICLE IX

### Miscellaneous

9.1 If any portion of this Declaration is declared invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other provisions of this Declaration.

9.2 To the extent that they are not inconsistent with this Declaration, the general rules of law regarding party walls shall apply to the real property subject hereto.

9.3 The singular wherever used herein shall be construed to mean the plural when applicable and necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or individuals, male or female, shall in all cases be amended as though in each case fully expressed.

9.4 None of the terms, conditions or covenants contained in this Declaration shall be deemed to be for the benefit of any person not a party hereto, and no such person shall be entitled to rely hereon in any way or manner. For purposes of this section, "party" shall include Declarants, the owners, and their heirs, successors and assigns.

9.5 Declarant reserves the right to amend the Unit owners' proportional responsibility for common expenses and voting rights to reflect changes in the size of Units. Neither this Declaration nor the Plat of Treasury Point Townhomes shall be otherwise amended except by an instrument signed in writing by the owners of Units having sixty-seven percent (67%) of the common expense responsibility which instrument shall be recorded in the office of the Gunnison County Clerk and Recorder. Approval by holders of deeds of trust, mortgages and/or other liens or encumbrances shall not be required. Except for amendments which reflect changes in the size of Units, no amendment which alters Unit owners' proportional responsibility for common expenses or voting rights shall be effective except upon the written approval of the owners of record of all Units plus the holders of all deeds of trust and/or mortgages encumbering such Units.

9.6 This Declaration shall be interpreted in accordance with the law of the State of Colorado. Any litigation brought to enforce or interpret the provisions of this Declaration shall be brought in a court of competent jurisdiction in Gunnison County, Colorado, and the prevailing party in such litigation or in any arbitration shall be entitled to an award of reasonable attorneys' fees and costs.

9.7 A Unit may not be conveyed pursuant to a time-sharing arrangement described in Sections 38-33-110 to 113, Colorado Revised Statutes.

9.8 All leases and rental agreements shall be in writing and subject to the reasonable requirements of the Association.

9.9 All easements and licenses to which the project is presently subject are recited in Exhibit A. In addition, the project may be subject to other easements granted by the Declarant as shown on the Map.





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## ARTICLE X

### Rights Reserved to Declarant

10.1 The Declarant specifically reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth in the Colorado Common Interest Ownership Act and this Declaration for the maximum time limit allowed by law, including, without limitation, the following:

10.1.1 The right to amend the Declaration as set forth in paragraph 9.5.

10.1.2 The right to appoint or remove any officer of the Association or any Director of the Association during the Declarant Control Period.

10.1.3 The right to complete or make any improvements as set forth on the Plat, or as required by the Town of Mt. Crested Butte.

10.1.4 The right to construct the project in phases.

10.1.5 The right to record a supplemental plat subdividing Phase 2 into up to eight (8) Townhome Units.

10.1.6 The right to maintain signs to advertise the project.

10.1.7 The right to dedicate a future public or private easement as shown on the Plat.

10.1.8 The right to delete Phase 2 from the project.

Executed as of the day and year first above written.



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DECLARANT:

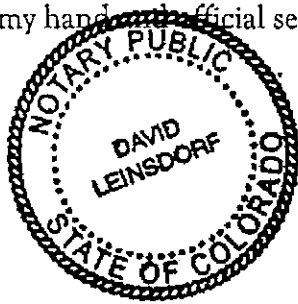
MT. CRESTED BUTTE DEVELOPMENT, LLC, a Colorado limited liability company

By: Gregory D. Cielinski  
Gregory D. Cielinski, President of SARSCO, INC., a Texas corporation, General Partner of Rhombus Royalty Co., Ltd., a Texas Limited partnership, Managing Member of Mt. Crested Butte Development, LLC, a Colorado limited liability company

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON

The foregoing instrument was acknowledged before me this 1<sup>ST</sup> day of February, 2000 by Gregory D. Cielinski, President of SARSCO, INC., a Texas corporation, General Partner of RHOMBUS ROYALTY CO., LTD, a Texas limited partnership, Managing Member of Mt. Crested Butte Development, LLC, a Colorado limited liability company.

Witness my hand and official seal. My commission expires: 09/13/00



David Leinsdorf  
Notary Public



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EXHIBIT A

Property

Township 13 South, Range 86 West, 6<sup>th</sup> P.M.

Section 26:

A tract of land within the North ½ of the Southeast ¼ of said Section 26, more particularly described as follows:

Commencing at a point on the easterly boundary of Hunter Hill Road of Chalet Village Addition No. 3, as shown by the Replat of Chalet Village Addition No.3 bearing Reception Number 260619 from which the East ¼ corner of said Section 26 bears North 69°15'54" East 1272.54 feet;

Thence South 1°51'12" West along the easterly boundary of said road a distance of 23.00 feet;

Thence along said easterly boundary along a curve to the right an arc distance of 107.48 feet, said curve having a radius of 1007.00 feet and a chord which bears South 4°44'12" West 107.16 feet;

Thence South 67°03'48" East 238.00 feet;

Thence South 37°21'12" West 106.00 feet to the point of beginning of the tract herein described.

Thence continuing South 37°21'12" West 447.00 feet;

Thence North 52°41'48" West 100.69 feet to the easterly boundary of said Hunter Hill Road;

Thence along said easterly road boundary on a curve to the left and arc distance of 386.14 feet to the southwest corner of a parcel of land described in Book 411 at Page 344 of the records of Gunnison County, Colorado, said curve having a radius of 1007.00 feet and a chord which bears North 26°19'40" East 383.78 feet;

Thence South 74°39'48" East 187.78 feet to the point of beginning, containing 1.22 Acres.

EXCEPTING THEREFROM that property conveyed to the Town of Mt. Crested Butte, Colorado, a Colorado Home-Rule Municipality, in Quit Claim Deed recorded August 12, 1981 in Book 570 at Page 16.



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Note: The above description locates that tract of land described as Exhibit "A" and being recorded in Book 540 at Page 336 upon the ground in a precise relationship to the as-monumented East ¼ corner (capped-pipe) of Section 26, and to the as-monumented Lot locations, and the as-monumented location of the easterly boundary of Hunter Hill Road of the "Replat of Chalet Village Addition No. 3" (plat filed on 14 September 1964 under Reception Number 260619 - Gunnison County Records).

Deed description (Exhibit A - Book 540 at Page 336) directions are rotated counter-clockwise 00°03'48" to be in compliance with the Direction basis of this survey.

Town of Mt. Crested Butte  
County of Gunnison  
State of Colorado

Easements

See Plat

Licenses

None



EXHIBIT B

TABLE OF INTERESTS

<u>Unit</u>	Square Footage	Percentage share of <u>Common Expenses</u>	Vote in the affairs of <u>Association</u>
1	1759	11.95	11.95
2	1760	11.95	11.95
3	2418	16.43	16.43
4	2418	16.43	16.43
5	2418	16.43	16.43
6	2188	14.86	14.86
7	<u>1759</u>	<u>11.95</u>	<u>11.95</u>
	14,720	100.00	100.00
8	Phase 2		
9	Phase 2		
10	Phase 2		
11	Phase 2		
12	Phase 2		
13	Phase 2		
14	Phase 2		
15	Phase 2		

Until Phase 2 of the Project (Units 8-15) has been constructed, Units 1-7 in Phase 1 shall bear full responsibility for Common Expenses in proportion to the percentages allocated to Units 1-7.

Declarant reserves the right to alter the percentage share of Common Expenses and votes in the affairs of Association based on the square footages of Units in the Project.