

**SECOND MODIFICATION TO DECLARATION  
FOR IRON HORSE TOWNHOMES**

This second modification to Declaration for Iron Horse Townhomes is made this \_\_\_\_\_ day of February, 2008 by GRACE HOMES CONSTRUCTION, INC. d/b/a GRACE HOMES REAL ESTATE AND CONSTRUCTION, INC. ("Grace Homes").

**RECITALS**

- A. On May 26, 2006, Declarant's predecessor recorded the Declaration for Iron Horse Townhomes with the Clerk and Recorder's office of Montrose, County, Colorado at Reception #755677 (the "Original Declaration").
- B. A correction of Exhibit A (which was the Exhibit describing the property subject to the Original Declaration) was recorded on June 26, 2007 at Reception #776326.
- C. On July 13, 2007 Declarant recorded a Modification to Declaration for Iron Horse Townhomes at Reception #777108 with the Montrose County Clerk and Recorder's Office.
- D. This Second Modification is done to satisfy the requirements for FHA and the Veteran's Administration, and other lending institutions, for Owner loans for the Iron Horse Townhome Condominiums. It is noted that while the name of the project was originally Iron Horse Townhomes, under the requirements of the City of Montrose, Colorado, the project is a condominium under applicable City and Colorado law.
- E. This Second Modification is authorized by Section 14.5 of the Original Declaration, as amended, because it is required by a mortgage lender or insurer. The amendments set forth below do not and will not increase the cost of any Units nor will they authorize any material physical modifications of any of the Units nor do they decrease the financial obligation of Declarant to any owner, all as set forth in said Section 14.5.
- F. Pursuant to said Section 14.5, no signature other than Declarant's is required to make this Second Modification effective.
- G. The Iron Horse Townhome Condominiums are part of the "Iron Horse Community," which includes the lots in the Iron Horse Single Family Community. For ease of reference, the Iron Horse Single Family Community is subject to the Declaration of Covenants, Conditions and Restrictions for Iron Horse Single Family Community, according to the Declaration recorded in Reception # 755676 on May 26, 2006, Montrose County Clerk and Recorder ("Single Family Declaration").

- H. The Single Family Declaration provided that the Single Family Community Association would be responsible for the operation, maintenance and repairs of the Common Elements as defined in the Single Family Declaration. The Single Family Declaration also provided for each Unit in the Townhome Condominium to pay its *pro rata* share of the expenses associated with the Common Elements to the Single Family Association.
- I. Based on these Recitals, the Original Declaration, as amended, is further amended as follows:
1. A new Section 9.11, titled Duties to Supply Documents, is hereby added to the Declaration to read as follows:

“9.11. Upon request from any owner, mortgage lender or other lien holder, the Association shall provide to such owner, lender or mortgage holder a current copy of the Declaration, including all Amendments, Corrections and Modifications thereto, by-laws and other rules governing the Condominium Unit along with any other books, records or financial statements of the Association. In addition the Association shall provide to prospective purchasers current copies of the Declaration as amended or corrected, by-laws, other rules governing the Association and the Units, including the most recent budget and audited financial statement if such is prepared. The Association shall make such documents available for inspection and copying during normal business hours as determined by the Board.

9.11.1 Upon written request from any lender, owner or mortgage holder, the Association shall be required to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding physical year.

9.11.2 Within ninety (90) days after adoption of any proposed budget by the Board, the Board shall mail or see that a copy of a personally delivered or written summary of the proposed budget is sent to each Owner. The Board shall set a date for a meeting of the Owners to consider the budget amendment, and shall give notice of such meeting to the Unit Owners. The proposed budget shall be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners. If the proposed budget is vetoed, the budget last proposed by the Board and not vetoed by the Owners shall continue to apply until a subsequent budget proposed by the Board is not vetoed by the Owners.

9.11.3. The Board of the Association shall propose a reserve or future capital expenditures account as a part of any proposed budget, subject to the foregoing Owner approval requirements. The Board shall, either through the

efforts of its members or by engaging professional services, keep current and accurate records of all income and expenditures of the Association, and shall at least once every year mail or deliver to each Owner a report showing all such incoming expenditures and a summary analysis indicating whether or not the Association spending is within the approved budget.”

2. The Declaration is amended by adding a new Section 14.10 that reads as follows:

“14.10 Declarant’s Control. The Declarant acknowledges that transfer of Declarant control of the Iron Horse Single Family Association has already occurred. Regarding the Iron Horse Townhome Condominium Association, Inc., the following shall apply.

14.10.1 The period of Declarant’s control of the Association shall terminate no later than the earlier of: sixty days after conveyance of seventy-five percent of the Units to Owners other than Declarant; or, two years after the last conveyance of a Unit by Declarant in the ordinary course of business.

14.10.2 Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant’s control, but in that event Declarant may require, for the duration of the period of Declarant’s control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

14.10.3 Not later than sixty days after conveyance of twenty-five percent of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board shall be elected by Owners other than Declarant. Not later than sixty days after conveyance of fifty percent of the Units to Owners other than Declarant, not less than thirty-three and one-third percent of the members of the Board shall be elected by Owners other than Declarant.

14.10.4 Not later than the termination of Declarant’s control, the Owners shall elect a Board of not less than three (3) nor more than seven (7) members, at least a majority of which shall be Owners other than Declarant or designated representatives of Owners other than the Declarant.

14.10.5 The executive board, or Board, shall elect the officers.

14.10.6 The Owners, by a vote of sixty-seven percent (67 %) of all persons present and entitled to vote in any meeting of the Owners at which a

quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the declarant.

14.10.7 Within sixty days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation, as further detailed in Section 38-33.3-303, C.R.S.; (a) the original or a certified copy of this Declaration and all amendments and corrections, the Association articles of incorporation, bylaws, minute books and records, and any rules or regulations that have been adopted; (b) an accounting for Association funds and financial statements; (c) the Association funds or control thereof; (d) all of the Association's personal property; (e) a copy of the plans and specifications used in construction of the improvements to the Common Elements; (f) copies of all insurance policies which name the Association, the Owners; or the members of the Board as insured persons; (g) copies of all certificates of occupancy for the improvements on all Common Elements, including any other permits issued by governmental bodies applicable to the Common Elements; (h) any written warranties relating to property of the Association that are still effective; (i) a roster of Owners, mortgagees and their addresses and telephone numbers, if known, as shown on Declarant's records; (j) All employment contracts, if any, in which the Association is a contracting party; and, (k) All service contracts for which the Association or the Owners have any obligation to pay a fee to the persons performing the services.

3. A new Section 2.4.4 is hereby added to the Declaration to read as follows:

"2.4.4 The Association has the right, pursuant to 2.4.3 above, to grant utility easements under, through or over the general Common Elements and the limited Common Elements as are reasonable determined by the Board of the Association to be reasonably necessary to the ongoing development and operation of the common interest community."

4. An additional section numbered 9.9.1 is hereby added to the Declaration to read as follows:

"9.9.1 Each such assessment under this Article, along with interest, costs and attorney's fees, are included within the personal obligation of the Unit Owner described in Section 9.9 above. Such personal obligation for delinquent assessments, together with interest, costs and attorney's fees, shall not pass to successors in title or interest unless specifically assumed by them."

5. An additional section numbered 9.5.1 is hereby added to the Declaration to read as follows:

"9.5.1 The Board shall establish an adequate reserve fund, to be included as part of the annual budget process, for the periodic maintenance, repair and replacement of the common elements, which funds shall be maintained out of regular assessments for common expenses."

6. A new Section 9.8.1 is hereby added to the Declaration to read as follows:

"9.8.1 Notwithstanding any of the language in this Declaration as modified and corrected, any lien of the Association for common expense assessments (including for Common Elements) which become payable on or after the date of recordation of the first mortgage shall be subordinate to said first mortgage. Such a lien for common expenses and the assessment shall not be affected by any sale or transfer of the Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for common expenses and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser of the Unit from liability for, nor the Unit so sold or transferred from the lien of, any common expenses or assessments which thereafter become due."

7. A new Section 4.14 is hereby added to the Declaration to read as follows:

"4.14 Lease. No Owner shall lease such Owner's Unit unless it is a lease in writing and is explicitly made subject to provisions of this Declaration and the by-laws of the Association. Any such lease by an Owner shall be for an initial term of at least thirty (30) days or longer. It is recommended that all such leases shall have an initial term of six (6) months or longer."

8. New Sections 9.12 and 9.13 are hereby added to the Declaration to read as follows:

"9.12 First Lienholder's Rights. A holder, insurer or guarantor of a first mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Unit number) shall be entitled to timely written notice of:

9.12.1 Any proposed amendment to the Declaration which affect the change in the boundaries of a Unit or the exclusive easement rights appertaining thereto or the interest in the general or limited common elements appertaining to any Unit with a liability for common expenses appertaining thereto;

9.12.2 The number of votes in the Association appertaining to the Unit or the purposes for which any Unit or the common elements are restricted;

9.12.3 Any condemnation loss or any casualty loss which affects a material portion of the Unit or the planned community or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder or any delinquency of the payment of assessments or charges owed by an owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days or longer;

9.12.4 Any proposed termination of the Condominium; or

9.12.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to the other provisions of this Declaration.

9.13 Other First Lienholder Provisions. Any restoration or repair of a Unit after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the condominium property must require the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated.”

9. A new Section 8.5.1 is hereby added to the Declaration to read as follows:

“8.5.1 The consent of at least sixty-seven percent (67%) of the vote of the Unit Owners shall be required to materially amend any provision of the by-laws which govern the Association and which relate to the following:

(a) Voting;

- (b) Assessment, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the common elements;
- (d) Insurance or fidelity bonds;
- (e) Rights to the use of the common elements;
- (f) Responsibility for maintenance and repair of the several portions of the Units;
- (g) Expansion or contraction of the condominium regime or the addition annexation or withdrawal of property to or from the regime;
- (h) Boundaries of any Unit;
- (i) The interest in the general or limited common elements;
- (j) Convertibility of Units in the common elements or of common elements in the Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit in the condominium; and
- (m) Establishment of self management by the Association or professional management that has been required by any of the lenders, mortgagors or holders of such mortgages.

10. The Declaration is amended by adding a new Section 14.5.1 to read:

“14.5.1 Declarant has no further rights to expand the condominium or the planned community beyond the preliminary and final plats that are already of record with the Montrose County Clerk and Recorder.”

11. The Declaration, Section 8.2 Insurance, is modified to read in its entirety as follows:

“8.2 Insurance. The Association shall maintain worker’s compensation insurance coverage and adequate blanket property insurance, liability insurance, flood

insurance if applicable, fidelity bond coverage. In addition, the Association shall obtain, maintain, and pay the premiums upon, as a common expense, a "master" or "blanket" type policy of property insurance covering all of the common elements and limited common elements (except land, foundation, excavation and other items normally excluded from coverage) including fixtures, to the extent they are part of the common elements, building service equipment and supplies and other common personal property belonging to the Association. In addition, any fixtures, equipment or other property within any Unit which is to be financed by a mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the common elements) shall be required to be covered in such "master" or "blanket" policy. The policy shall be in an amount equal to one-hundred percent (100%) of the current replacement cost of the condominium exclusive of land, foundation, excavation and other items normally excluded from coverage. Loss payable shall be in favor of the Association as a trustee for each applicable Owner and each such Owner's mortgagee. Certificates of Insurance shall be issued to each Owner and mortgagee upon request. Each such policy shall provide that they cannot be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. The insurance policies shall comply with the requirements of the current version of the HUD guidelines in Handbook 4265.1 Change for, Appendix 24."

12. The following are hereby added to the Definition Section in Article I of the Declaration (to be inserted in alphabetical order):

1. "FNMA means Federal National Mortgage Association."
2. "FHLMC means Federal Home Loan Mortgage Corporation."

13. Section 2.4 of the Declaration is amended by adding the words "and the Iron Horse Community" between the words "Common Interest Community" in the third line of said section 2.4 and the words "for the purpose of," on said third line. The purpose of this amendment is to make clear that the Owners of Units have the same benefits, burdens, and other rights and duties with respect to the Common Elements of the Single Family Community as do the Owners of Lots in the Single Family Community.

14. The definition of "Unit" set forth in section 1.24 of the Declaration is amended by adding "or Lot" after "Unit" and before "...shall mean a physical portion of ..." in the first line of said section 1.24.



