

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
1700 SKI TIME SQUARE CONDOMINIUM**

Table of Contents

	<u>Page</u>
ARTICLE I DECLARATION	1
1.01 Declaration.....	1
1.02 Covenants Running with the Land.....	1
ARTICLE II DEFINITIONS	1
2.01 Basic Definitions.....	1
2.02 Usage.....	9
ARTICLE III UNITS AND COMMON ELEMENTS	10
3.01 Division of Property.....	10
3.02 Units.....	10
3.03 Description of Units.....	10
3.04 Separate Taxation of Units.....	11
3.05 Owner Right to Assign Use Rights.....	11
3.06 Interests in Common Elements.....	11
3.07 Limited Common Elements.....	12
ARTICLE IV THE ASSOCIATION	12
4.01 Formation of the Association.....	12
4.02 Purposes and Powers.....	12
4.03 Association Documents.....	14
4.04 Books and Records.....	14
4.05 Association Property.....	15
4.06 Owner Education.....	15
4.07 Disclosures to Owners.....	16
ARTICLE V VOTING.....	16
5.01 Voting in General.....	16
5.02 Residential Voting.....	17
5.03 Commercial Voting.....	17
5.04 Secret Ballots.....	18
ARTICLE VI EXECUTIVE BOARD	18
6.01 Powers of the Executive Board.....	18
6.02 Number of Directors; Class Interests.....	19
6.03 Election of Directors.....	20
6.04 Declarant Control Period.....	20
6.05 Removal of Directors.....	22
6.06 Replacement of Directors.....	22
6.07 Notice and Opportunity to be Heard.....	22
ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS	22
7.01 Obligations for Assessments.....	22
7.02 Shares of Common Expenses.....	23
7.03 Budgets.....	24

7.04	General Assessments.....	25
7.05	Limited Assessments.....	26
7.06	Special Assessments.	27
7.07	Default Assessments.	28
7.08	Assignment of Assessments.....	28
7.09	Assessment Lien.	28
7.10	Waiver of Homestead Exemptions.	29
7.11	Estoppel Certificates; Notices to Mortgagees.....	29
7.12	Reserve Funds.....	30
7.13	Working Capital.....	30
7.14	Disputes Regarding Assessments.....	31
ARTICLE VIII UTILITIES AND OTHER SERVICES		31
8.01	Utility and Mechanical Systems	31
8.02	Water, Sewer and Gas.....	32
8.03	Electric.....	32
8.04	Cable, Internet and Telephone	32
8.05	Trash and Recycling.....	32
8.06	Other Utilities.....	33
ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS		33
9.01	Maintenance of Common Elements.....	33
9.02	Maintenance of Condominium Systems.	34
9.03	Maintenance of Units.....	34
9.04	Mechanic’s Liens and Indemnification.....	34
9.05	Maintenance Recommendations	34
ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS		35
10.01	Applicability of Covenants, Conditions and Restrictions.....	35
10.02	Association Documents.....	35
10.03	Other Documents and Restrictions.	35
10.04	Notice of Conveyance, Assignment or Encumbrance.	35
10.05	Use of Residential Units.	36
10.06	Use of Common Elements and Association Property.....	37
10.07	Construction and Alterations.	37
10.08	Nuisances, Hazardous Activities and Unsightliness.....	39
10.09	Signs.....	40
10.10	Compliance with Laws and Matters of Record.....	40
10.11	Compliance with Insurance.....	40
10.12	Subdivision, Rezoning and Timesharing.	41
10.13	Vehicles and Parking.	41
10.14	Deliveries, Trash Removal and Other Services.	43
10.15	Exterior Storage; Storage Areas.....	44
10.16	Temporary Structures.....	44
10.17	Animals.....	44
10.18	Grills; Solid-Fuel Burning Devices.....	45
10.19	Smoking Prohibitions and Regulations.....	45
10.20	Commercial Units.	45

10.21	Prohibited Uses	47
10.22	Declarant's Exemption.....	47
ARTICLE XI EASEMENTS AND RESERVATIONS		47
11.01	Declarant's Easements Over Common Elements.	47
11.02	Utility Easement.....	48
11.03	Association's Easement.	48
11.04	Easements for Commercial Unit Owners.....	49
11.05	Emergency Access Easement.....	49
11.06	Easements for Encroachments.	49
11.07	Recorded Easements and Licenses	49
ARTICLE XII INSURANCE		50
12.01	Insurance Required to be Obtained by the Association.	50
12.02	Casualty Insurance for Improvements.	50
12.03	Adjustments.	50
12.04	Owners' Policies	50
ARTICLE XIII CASUALTY		51
13.01	Casualty to Association Insured Property.....	51
13.02	Casualty to a Unit.....	52
13.03	Casualty to Association Property.....	52
ARTICLE XIV CONDEMNATION		52
14.01	Condemnation of All Units	52
14.02	Condemnation of Fewer Than All Units.....	52
14.03	Condemnation of Common Elements	52
ARTICLE XV DECLARANT RIGHTS		53
15.01	Improvements.....	53
15.02	Development Rights.....	53
15.03	Sales Offices and Models.....	54
15.04	Parking Spaces.....	54
15.05	Storage Areas.....	54
15.06	Merger.....	55
15.07	Exercising Declarant Rights.....	55
15.08	Interference with Declarant Rights.	55
15.09	Rights Transferable.....	55
ARTICLE XVI MORTGAGEE PROTECTIONS		55
16.01	Benefit of First Mortgagees.	55
16.02	Notice of Actions.	55
16.03	Consent Required.....	56
16.04	Notice of Objection.....	56
16.05	First Mortgagee's Rights.....	57
16.06	Condemnation.....	57
16.07	Limitations on First Mortgagee's Rights	57
16.08	Declarant Rights.....	57
ARTICLE XVII ENFORCEMENT AND REMEDIES		57

17.01	Enforcement.....	57
17.02	Attorneys' Fees.....	59
17.03	Interest.....	59
17.04	Nonwaiver.....	59
ARTICLE XVIII TERM AND AMENDMENTS		59
18.01	Term.....	59
18.02	Termination.....	59
18.03	Amendments.....	60
ARTICLE XIX DISPUTE RESOLUTION		61
19.01	Dispute Resolution.....	61
19.02	Definitions Applicable to this Article.....	62
19.03	Approval Required for Association Actions.....	62
19.04	Notice and Quorum for Association Actions.....	63
19.05	Required Form of Proxy or Ballot	64
19.06	Exclusions from "Claim".....	64
19.07	Right to Inspect and Repair.....	65
19.08	Mandatory Procedures.....	67
19.09	Liability for Failure of Association to Maintain an Action	69
19.10	Waiver of Consequential, Punitive and Other Damages.....	69
19.11	No Amendment; Standing to Enforce.....	70
19.12	Reformation	71
ARTICLE XX DISCLAIMERS AND DISCLOSURES; OWNER ACKNOWLEDGMENTS ..		71
20.01	Urban Environment.....	71
20.02	No View Easement.....	71
20.03	Sound Transmission and Light Disclaimer; Release.....	71
20.04	Safety and Security.....	72
20.05	Garage; Parking.....	72
20.06	Amenities.....	73
20.07	Condensation/Humidity	73
20.08	Mold.....	73
20.09	Signage.....	74
20.10	Construction Activities	74
20.11	Mountain Activities.....	74
20.12	Commercial Activities	75
20.13	Other Properties	76
ARTICLE XXI MISCELLANEOUS		76
21.01	Interpretation of the Declaration.....	76
21.02	Severability.....	76
21.03	Disclaimer of Representations.....	76
21.04	Reference to Declaration.....	76
21.05	Successors and Assigns of Declarant.....	76
21.06	Captions and Titles.....	77
21.07	Exhibits.....	77
21.08	Governing Law.....	77
21.09	Notices.....	77

21.10 Waivers..... 77

- EXHIBIT A - LEGAL DESCRIPTION OF THE PROPERTY
- EXHIBIT B - ADDITIONAL PROPERTY
- EXHIBIT C - ALLOCATED INTERESTS
- EXHIBIT D - INSURANCE REQUIREMENTS
- EXHIBIT E - RECORDED EASEMENTS, LICENSES, AGREEMENTS AND COVENANTS

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR 1700 SKI TIME SQUARE CONDOMINIUM**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR 1700 SKI TIME SQUARE CONDOMINIUM (this “**Declaration**”) is made as of _____, 202__, by _____, a _____ (together with its successors and assigns, “**Declarant**”).

Recitals

- A. Declarant owns the real property located in the City of Steamboat Springs, Routt County, Colorado that is more particularly described on Exhibit A attached hereto.
- B. Declarant desires to create a condominium on such property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319 (the “**Act**”).
- C. Declarant deems it necessary and desirable to subject the Property and the Improvements (as defined in Section 2.01) to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.
- D. Capitalized terms used in this Declaration shall have the meanings set forth in Section 2.01.

Declaration

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I
DECLARATION

1.01 Declaration. Declarant hereby creates a condominium named “1700 Ski Time Square Condominium” on the Property and declares that the Property and the Improvements shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.02 Covenants Running with the Land. All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners, the Association, and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II
DEFINITIONS

2.01 Basic Definitions. As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

(a) “**Acceptable Licensee**” has the meaning given to that term in Section 10.13(b).

(b) “**Accessible Spaces**” has the meaning given to that term in Section 10.13(c).

(c) “**Act**” has the meaning given to that term in Recital B.

(d) “**Additional Property**” means the real property described on Exhibit B attached hereto.

(e) “**Affiliate**” means any Person that, directly or indirectly, is in control of, is controlled by or is under common control with Person for whom an affiliate is being determined. For purposes hereof, control of a Person means the power, direct or indirect, to (i) vote 20% or more of the ordinary voting power of such Person, or (ii) direct or cause the direction of the management and policies of such Person whether by contract or otherwise, and either alone or in conjunction with others.

(f) “**Applicable Law**” means all federal, state or local law or statute, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property or the Condominium, including but not limited to the Act.

(g) “**Area**,” when reference is made to a Unit, but excluding any Limited Common Elements, means the total number of finished square feet thereof as shown on the Map, or if such square footage is not shown on the Map, then “**Area**,” when reference is made to a Unit, means the total number of finished square feet of such Unit, as determined by the Executive Board in its sole and absolute discretion.

(h) “**Articles**” means the articles of incorporation of the Association, as amended or supplemented at any time and from time to time.

(i) “**Assessment**” means a General Assessment, a Limited Assessment or a Default Assessment levied and assessed pursuant to ARTICLE VII.

(j) “**Assessment Lien**” has the meaning given to that term in Section 7.09.

(k) “**Association**” means 1700 Ski Time Square Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(l) “**Association Documents**” means this Declaration, the Articles, the Bylaws and the Rules and Regulations.

(m) “**Association Insured Property**” has the meaning given to that term in Section 12.02(a).

(n) “**Association Property**” means all personal property that the Association either owns, leases or otherwise has a right to use at any time and from time to time.

(o) **“Building Exterior and Structural Elements”** means, except as may be specifically provided in this Declaration, foundations, floors, columns, girders, joists, beams, slabs, supports, perimeter and supporting walls, building envelope/glazing systems/facades, patios, Balconies, decks and roofs, chimneys, and other structural parts and components of the building.

(p) **“Bylaws”** means the bylaws of the Association, as amended or supplemented at any time and from time to time.

(q) **“City”** means the City of Steamboat Springs, Colorado.

(r) **“Commercial Activities”** has the meaning given to that term in Section 20.12.

(s) **“Commercial Activity Areas”** has the meaning given to that term in Section 20.12.

(t) **“Commercial Common Elements”** means the Limited Common Elements appurtenant to the Commercial Units and designated for the use by some or all Commercial Units but not Residential Units. Commercial Common Elements include any physical portion of the Condominium that is designated as “LCE-C” or “LCE-C-__” (Commercial Common Element appurtenant to the Commercial Unit or Units specified in the blank) on the Map.

(u) **“Commercial Common Expenses”** means the Common Expenses that are incurred for the benefit of only the Commercial Units, as determined by the Executive Board.

(v) **“Commercial Director”** has the meaning given to that term in Section 6.02(a)(ii).

(w) **“Commercial Parking Spaces”** means those Parking Spaces, if any, that are identified as Limited Common Elements appurtenant to Commercial Units on the Map.

(x) **“Commercial Units”** means a Units designated on the Map as a “Commercial Unit,” “Commercial” or “CU.”

(y) **“Common Elements”** means the General Common Elements and the Limited Common Elements.

(z) **“Common Expenses”** means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including costs, expenses and liabilities for (A) managing, operating, insuring, constructing, improving, repairing, replacing, altering, renovating and maintaining the Common Elements and the Association Property; (B) paying any taxes or assessments levied against the Association Property; (C) providing facilities, services and other benefits to Owners; (D) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (E) levying, collecting and enforcing the Assessments, charges and

liens imposed pursuant hereto; (F) regulating and managing the Condominium; (G) operating the Association; (H) without impairing the rights of Owners of Commercial Units and their Permittees set forth in this Declaration, taking any action it deems necessary or appropriate to protect the general welfare of Owners, Permittees and the general public; (I) performing and observing obligations or conditions to be performed or observed, and paying any fees or other charges to be paid by the Association under this Declaration or any easement, contract, agreement, or other instrument, including those easements, licenses, agreements and covenants described on Exhibit E attached hereto; and (J) complying with Applicable Law; and

(ii) reserves for any such costs, expenses and liabilities.

(aa) “**Condominium**” means 1700 Ski Time Square Condominium, the condominium created on the Property by this Declaration.

(bb) “**Contractor**” means any Person, including a general contractor and subcontractors, material supplier, or product manufacturer retained or engaged for the construction of the Condominium or the supply of materials or equipment therefor, and its respective officers, directors, partners, members, employees and agents.

(cc) “**Condominium Parking Garage**” means the parking facility for the Condominium which is designed to be used for parking vehicles and for ingress and egress to and from the parking spaces by Owners and Permittees.

(dd) “**Construction Activities**” has the meaning given to that term in Section 20.10.

(ee) “**CPI**” means the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84=100), Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the Association shall adopt a substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

(ff) “**CPI Adjustment Factor**” means a fraction, the numerator of which is the CPI available for the month that is ninety (90) days prior to the date the adjustment is to become effective and the denominator of which is the CPI for the same month in the immediately preceding year.

(gg) “**Declarant**” has the meaning given to that term in the introductory paragraph.

(hh) “**Declarant Control Period**” has the meaning given to that term in Section 6.04.

(ii) “**Declaration**” has the meaning given to that term in the introductory paragraph.

(jj) “**Default Assessment**” has the meaning given to that term in Section 7.07.

(kk) “**Design Consultant**” means any Person engaged to assist in the design or construction of any Improvement, including architects, landscape designers, engineers and similar design professionals, and its respective officers, directors, partners, members, managers, employees and agents.

(ll) “**Director**” means a duly elected or appointed member of the Executive Board.

(mm) “**Disabled Owner**” has the meaning given to that term in Section 10.13(c).

(nn) “**Executive Board**” means the Association’s board of directors.

(oo) “**First Mortgage**” means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens that are given priority by statute.

(pp) “**First Mortgagee**” means a Mortgagee under a First Mortgage.

(qq) “**General Assessment**” has the meaning given to that term in Section 7.04.

(rr) “**General Common Elements**” means all of the Condominium, other than (i) those portions of the Condominium that are designated by the Act, by this Declaration or by the Map as Units or Limited Common Elements or (ii) those Improvements, fixtures and equipment that are owned by a third party, such as a utility or service provider, and are located on the Property pursuant to an easement, license or any other agreement, whether written or oral.

(ss) “**General Common Expenses**” means the Common Expenses incurred for the benefit of all Units, as determined by the Executive Board.

(tt) “**Guest**” means the tenants, sub-tenants, employees, family members, and licensees of an Owner.

(uu) “**Improvement**” means any building, structure or other improvement (including all fixtures and improvements contained therein) located within the Property.

(vv) “**Initial Units**” has the meaning given to that term in Section 3.02(a).

(ww) “**Interest in Common Elements**” means the undivided interest in the Common Elements appurtenant to each Unit, determined in accordance with the terms and conditions of Section 3.06.

(xx) “**Limited Assessment**” has the meaning given to that term in Section 7.05.

(yy) “**Limited Common Elements**” means those portions of the Common Elements designated by this Declaration, the Map or operation of the Act for the exclusive use of

one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, Limited Common Elements include:

(i) any shutters, awnings, window boxes, windows and doors located at the boundaries of the Units;

(ii) any Utility and Mechanical Systems, patios, balconies, decks, courtyards, pools, hot tubs, spas, recreational facilities, exits, entrances, elevators, waiting areas, laundry facilities, restrooms, hearth rooms, fireplaces, libraries, walkways, and other areas and Improvements that are designed to serve fewer than all of the Unit;

(i) any Storage Areas allocated for the exclusive use of certain Units herein or on the Map; and

(ii) any physical portion of the Condominium that is designated on the Map as “Limited Common Element,” “LCE,” “LCE-___” (Limited Common Element appurtenant to the Unit or Units specified in the blank), “LCE-R” (Residential Common Element), or “LCE-C” (Commercial Common Element).

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a Utility and Mechanical or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving other Units or any portion of the General Common Elements or Limited Common Elements is a General Common Element or Limited Common Element, as determined in accordance with Section 8.01(a).

(zz) “**Maintenance Recommendations**” refers to all maintenance manuals, recommendations, schedules and other documents, including those for manufactured products and appliances, provided to the Association and to each Owner and specifying obligations for inspection, operation and routine maintenance of all systems, equipment and similar items (including, but not limited to, mechanical, electrical, plumbing, structural and exterior systems and improvements) made part of or serving the Condominium, its Common Elements and Units, as updated and amended from time to time in accordance with Section 9.05.

(aaa) “**Majority**” means any percentage greater than fifty percent (50%).

(bbb) “**Map**” means the condominium map for the Condominium recorded in the Official Records contemporaneously with this Declaration, depicting a plan and elevation schedule of the showing the layout, location, and identifying numbers and dimensions of the Units, as the same may be amended or supplemented from time to time.

(ccc) “**Mold**” has the meaning given to that term in Section 20.08.

(ddd) “**Mortgage**” means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

(eee) “**Mortgagee**” means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

(fff) “**Mountain Activities**” has the meaning given to that term in Section 20.11.

(ggg) “**Mountain Recreation Areas**” has the meaning given to that term in Section 20.11.

(hhh) “**Notice and Opportunity to be Heard**” has the meaning given to that phrase in Section 6.07.

(iii) “**Official Records**” means the Office of the Clerk and Recorder for the Routt County, Colorado.

(jjj) “**Officer**” means a duly elected or appointed officer of the Association.

(kkk) “**Ordinances**” has the meaning given to that term in Section 20.13.

(lll) “**Original Owner**” has the meaning given to that term in Section 10.13(c).

(mmm) “**Other Properties**” has the meaning given to that term in Section 20.13.

(nnn) “**Owner**” means the record holder of legal title to any Unit or any portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner. The term “**Owner**” includes Declarant to the extent that Declarant is the record holder of legal title to a Unit.

(ooo) “**Parking Spaces**” means the parking spaces located in the Condominium Parking Garage. Subject to Section 15.04 below, Parking Spaces are Limited Common Elements, as reflected on the Map.

(ppp) “**Permittees**” means and includes: (i) the Guests, contractors, subcontractors, agents, and invitees of an Owner; (ii) the respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors of any person described in subclause (i) of this definition; and (iii) any other person designated as a Permittee by this Declaration.

(qqq) “**Person**” means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(rrr) “**Plans**” shall have the meaning given to that term in Section 10.07(d).

(sss) “**Property**” means the real property described on Exhibit A attached hereto, together with any real property that is later made subject to this Declaration in accordance with the terms and conditions contained herein.

(ttt) **“Purchaser”** means a Person, other than Declarant or a Successor Declarant, who acquires legal title to any Unit or portion thereof.

(uuu) **“Residential Common Elements”** means the Limited Common Elements appurtenant to the Residential Units and designated for the use of Residential Units but not Commercial Units. Residential Common Elements include any physical portion of the Condominium (including, without limitation, a Storage Area) that is designated as “LCE-R” or “LCE-R-___” (Residential Common Element appurtenant to the Unit or Units specified in the blank) on the Map or otherwise designated as a Residential Limited Common Element by this Declaration.

(vvv) **“Residential Common Expenses”** means the Common Expenses that are incurred for the benefit of only the Residential Units, as determined by the Executive Board.

(www) **“Residential Director”** has the meaning given to that term in Section 6.02(a)(i).

(xxx) **“Residential Parking Spaces”** means those Parking Spaces that are identified as Limited Common Elements appurtenant to Residential Units on the Map..

(yyy) **“Residential Units”** means any Unit, other than the Commercial Unit.

(zzz) **“Rules and Regulations”** means any procedures, rules, regulations, policies or other instruments adopted by the Association for the regulation and management of the Condominium as may exist at any time, and as may be amended or supplemented at any time and from time to time.

(aaaa) **“Share of Commercial Common Expenses”** means the share of Common Expenses allocated to each Commercial Unit in accordance with the terms and conditions of Section 7.02(c).

(bbbb) **“Share of General Common Expenses”** means the share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.02(a).

(cccc) **“Share of Residential Common Expenses”** means the share of Common Expenses allocated to each Residential Unit in accordance with the terms and conditions of Section 7.02(b).

(dddd) **“Special Declarant Rights”** means all “special declarant rights” (as such term is defined in the Act) that Declarant reserves for itself in this Declaration.

(eeee) **“Storage Area”** means any storage area depicted on the Map that is allocated as a Limited Common Element to a particular Residential Unit.

(ffff) **“Successor Declarant”** means any Person who succeeds to any Special Declarant Right or any other rights reserved to Declarant under this Declaration.

(gggg) “**Total Area of all Units**” means the combined Area of all Units in the Condominium.

(hhhh) “**Total Area of Commercial Units**” means the combined Area of all Commercial Units in the Condominium.

(iiii) “**Total Area of Residential Units**” means the combined Area of all Residential Units in the Condominium.

(jjjj) “**Unit**” means a physical portion of the Condominium that:

- (i) is created by this Declaration;
- (ii) is designated for separate ownership; and
- (iii) has boundaries that are described in this Declaration or shown on

the Map.

If walls, floors or ceilings are designated as boundaries of a Unit, all lath, furring, wallboard, drywall, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

(kkkk) “**Utility and Mechanical Systems**” means and includes private and public utility lines and systems of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sprinklers, sanitary sewer, storm sewer, chilled water, condensed water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity, security, fire alarm, emergency communications, systems control and automation, video monitoring, telephone, television, other telecommunications data transmission systems, and other mechanical, electrical, and related life safety systems.

(llll) “**Working Capital Contribution**” has the meaning given to that term in Section 7.13.

2.02 Usage. Wherever the context of this Declaration so requires:

- (a) references to one gender include all genders;
- (b) words used in the singular shall include the plural and words used in the plural shall include the singular;
- (c) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted under this Declaration;
- (d) “including” is not limiting;
- (e) “or” has the inclusive meaning represented by the phrase “and/or”;

(f) the words “hereof,” “herein,” “hereby,” “hereunder” and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;

(g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified; and

(h) references to any agreement, document or instrument (including this Declaration) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE III UNITS AND COMMON ELEMENTS

3.01 Division of Property. Declarant hereby divides the Property into the Units (identified by identifying number set forth on Exhibit C and depicted on the Condominium Map) and the Common Elements, and designates the Units for separate ownership.

3.02 Units.

(a) Declarant hereby creates [____] Residential Units and [____] Commercial Units (collectively, the “**Initial Units**”) within the Condominium, the boundaries and identifying numbers of which are shown on the Map.

(b) Declarant reserves the right to create a maximum of [____] Residential Units and [____] Commercial Units, for a maximum total number of [____] Units within the Condominium, as the same may be expanded from time to time.

(c) No Owner may alter a Unit, subdivide a Unit or relocate the boundaries between adjacent Units, except in accordance with this Declaration.

3.03 Description of Units.

(a) Subsequent to the recordation of this Declaration and the Map, and the signing of a deed or other instrument of conveyance for a particular Unit, every contract, deed, lease, assignment of lease, sublease, mortgage, deed of trust, will or other instrument may describe a Unit with its identifying Unit designation, followed by the words “1700 Ski Time Square Condominium” with further reference to the recorded Declaration and Map. To convey, encumber or otherwise affect legal title to a Unit, an instrument must describe the Unit substantially as follows:

[Residential Unit ___/Commercial Unit] ____, 1700 Ski Time Square Condominium, according to the Declaration of Covenants, Conditions and Restrictions for 1700 Ski Time Square Condominium, recorded on _____, 20__ at Reception No. _____, and the Condominium Map for 1700 Ski Time Square Condominium separately recorded on _____, 20__ at Reception No. _____, Routt County, Colorado.

Such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Unit and all of the rights, obligations, benefits, and burdens associated with such Unit including the beneficial use of any Common Elements associated with such Unit. The reference to the Map and the Declaration in any instrument shall be deemed to include any recorded supplements or amendments thereto.

(b) Copies of each instrument of conveyance entered into by Declarant and an Owner in connection with the initial conveyance of a Unit by Declarant to an Owner shall be furnished by Declarant to the Association. Upon each subsequent conveyance of a Unit, a true copy of the instrument of conveyance shall be furnished by the transferee to Declarant and the Association. Each Owner shall provide the Association with a written notice setting forth the name and address of the Mortgagee of such Owner's Unit (together with, upon request, a true and correct copy of any Mortgage on such Owner's Unit) within thirty (30) days after recordation of the applicable Mortgage.

(c) Except as expressly provided to the contrary in this Declaration, the Interest in Common Elements and the right to use Limited Common Elements appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof.

3.04 Separate Taxation of Units. Pursuant to the Act, each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.05 Owner Right to Assign Use Rights. Notwithstanding anything to the contrary elsewhere in this Declaration:

(i) a Residential Owner may grant its rights to use any General Common Element or any Limited Common Element allocated to the Owner's Residential Unit to the Owner's Guests;

(ii) a Commercial Owner may grant its rights to use any General Common Element or any Limited Common Element allocated to the Owner's Commercial Unit to the Owner's Permittees; and

(iii) an Owner of a Unit may license its rights to use a Parking Space allocated to such Owner's Unit pursuant to and in accordance with Section 10.13(b).

3.06 Interests in Common Elements. The Owners shall own the Common Elements as tenants in common, with each Owner owning the Interest in Common Elements allocated to its Unit.

(a) The Interests in Common Elements shall be allocated among the Units as set forth in this Section 3.06. The Interest in Common Elements appurtenant to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Interest in Common Elements} = \frac{(\text{Area of the Unit})}{(\text{Total Area of all Units})} \times 100$$

(b) The Interest in Common Elements appurtenant to each of the Initial Units is set forth on Exhibit C attached hereto.

(c) If any Units are added to or withdrawn from the Condominium, or combined or subdivided, or if the Area of one or more Units is increased or decreased, the Interest in Common Elements for all Units within the Condominium after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Section 3.06(a).

(d) An Interest in Common Elements may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Interest in Common Elements made without the Unit to which the Interest in Common Elements is appurtenant shall be void.

3.07 Limited Common Elements.

(a) Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements to the Units pursuant to this Declaration or the Map or by operation of the Act may not be altered without the consent of all Owners whose Units would be affected by such reallocation, and then only in accordance with the terms and conditions of the Act.

(b) Except as expressly provided to the contrary in this Declaration, an Owner's right to use the Limited Common Elements allocated to the Owner's Unit may not be partitioned or separated from the Unit or any part thereof, and any purported conveyance, encumbrance or transfer of an Owner's right to use a Limited Common Element made without the Unit to which such Limited Common Element is appurtenant shall be void.

ARTICLE IV THE ASSOCIATION

4.01 Formation of the Association. On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are to:

(i) manage, operate, insure, construct, improve, repair, replace, alter, renovate and maintain the Common Elements and the Association Property;

(ii) provide certain facilities, services and other benefits to Owners, Permittees and the general public;

(iii) administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) establish, publish, administer, amend and modify the Rules and Regulations as the Association deems necessary or desirable consistent with and subject to any limitations in this Declaration, the Articles, the Bylaws and the Act.

(vi) regulate and manage the Condominium; and

(vii) take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners, Permittees and the general public.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may, subject to any limitations in the Association Documents:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including the hiring and terminating of employees, agents and independent contractors and the adoption and enforcement of Rules and Regulations;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

(c) Without in any way limiting the generality of Section 4.02(b), the Association may, but unless otherwise required elsewhere in this Declaration, is not obligated to:

(i) provide certain facilities and services to the Owners, such as (A) recreational facilities and services, (B) water, sewer, gas, electric, telephone, internet, cable television and other utility facilities and services, (C) parking facilities and services, (D) trash collection facilities and services, and (E) snow removal facilities and services;

(ii) acquire, sell, lease and grant easements over, across and through Common Elements;

(iii) acquire, own, sell or lease the Association Property;

(iv) enter into agreements with other Persons, including easements, licenses, leases and other agreements with one or more common interest community or other associations or governmental or quasi-governmental entities, which provide for the sharing of expenses between or among the Association and such other Persons for improvements, facilities and services that serve the Association and such other Persons;

(v) borrow monies and grant security interests in the Common Elements, the Association Property and the other assets of the Association as collateral therefor;

(vi) make capital improvements, repairs and replacements to the Common Elements; and

(vii) hire and terminate managing agents and other employees, professionals, agents and independent contractors.

(d) The Association may provide facilities and services itself or it may contract with private, governmental or quasi-governmental Persons to provide facilities or services.

4.03 Association Documents.

(a) This Declaration creates the Condominium and sets forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Property. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Condominium.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control. Notwithstanding anything to the contrary in this Declaration, in no event shall any Rule or Regulation unreasonably restrict or impede the ability of the Owners of the Commercial Units or their Permittees to exercise their rights with respect to the Commercial Units or Commercial Common Elements in accordance with this Declaration.

4.04 Books and Records.

(a) The Association shall keep as permanent records each of the following:

(i) minutes of all meetings of Owners and the Executive Board;

(ii) a record of all actions taken by the Owners or Executive Board by written ballot or written consent in lieu of a meeting;

(iii) a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Association;

(iv) a record of Owners in a form that permits preparation of a list of the names and addresses of all Owners; and

(v) a record of all waivers of notices of meetings of Owners, the Executive Board or any committee of the Executive Board.

(b) The Association shall keep a copy of each of the following records at its principal office:

(i) the Articles;

(ii) this Declaration;

(iii) the Bylaws

(iv) such resolutions, minutes, written communications, financial statements and audits and other documentation and information of the Executive Board and the Association as is required by Applicable Law, including, without limitation, Section 317 of the Act;

(v) a list of names, email addresses and business or home addresses of its current Directors and Officers;

(vi) the Association's most recent annual report, if any; and

(vii) the Association's most recent reserve study, if any.

(c) Upon request, during normal business hours and under other reasonable circumstances, the Association shall allow any Owner, Mortgagee, Guarantor or their respective agents to inspect current copies of the foregoing records, except to the extent the Association is permitted or required to withhold such records from inspection pursuant to Section 317 of the Act. The Association may charge a reasonable fee for copying such materials at a cost not to exceed the Association's actual expenses incurred for such copying.

(d) The Association shall cause to be maintained a record of all Owners, by name and address, and which lists the total number of votes each such Owner is entitled to vote.

(e) To the extent required by Applicable Law, the books and records of the Association shall be subject to (i) review, using statements on standards for accounting and review services by an independent and qualified Person selected by the Executive Board, or (ii) upon the request of one-third of the Owners, a full audit performed in accordance with generally accepted accounting principles, by a certified public accountant selected by the Executive Board. The results of such review or audit shall be made available to the Owners, upon request, not later than thirty (30) days after the later of either completion of the audit or the receipt of the applicable Owner's request.

4.05 Association Property. The Association shall, on behalf of all Owners, hold title to all Association Property in its name, and no Owner shall have any right, title, or claim thereto. The Association shall have the exclusive right to deal with Association Property for all purposes.

4.06 Owner Education. To the extent required by Applicable Law, at least once per calendar year, the Association shall provide at no cost, or cause to be provided at no cost, education to Owners as to the general operations of the Association and the responsibilities of Owners, the Association and the Executive Board under Applicable Law.

4.07 Disclosures to Owners.

(a) Not later than ninety (90) days after the expiration of the Declarant Control Period, and within ninety (90) days after any change thereto, the Association shall provide to all Owners the information set forth in Section 209.4(1) of the Act, in the manner set forth in Section 209.4(3) of the Act.

(b) Not later than ninety (90) days after the expiration of the Declarant Control Period, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make available to Owners the information set forth in Section 209.4(2) of the Act, in the manner set forth in Section 209.4(3) of the Act.

ARTICLE V
VOTING

5.01 Voting in General.

(a) The votes in the Association shall be allocated as described in this ARTICLE V.

(b) Initially, there shall be two (2) classes (the “**Classes**” and each, a “**Class**”) for allocating votes in the Association: (i) a Class consisting of Owners of Residential Units; and (ii) a Class consisting of Owners of Commercial Units. In the event that Declarant or any Successor Declarant exercises the right to create or add new Units within the Condominium, Declarant or such Successor Declarant may cause the Owner(s) thereof to be a separate Class, or modify the initial Classes to include such Owner(s) therein. For example purposes only, such a “Class” may consist of Owners within a particular building within the Condominium.

(c) Following the termination or expiration of the Declarant Control Period, all Class issues shall be voted upon or otherwise acted upon by the Owners in the Class at a regular or special meeting of the Association or at such other special meeting of the Class as may be called. For purposes of any such meeting of the Class, the Association shall distribute to the Owners of the Class such notices of the meeting and other information required to be delivered to Owners by the Association for a meeting of the Association as provided in the Bylaws. The decision on whether an issue relates solely to a particular Class or otherwise fits within the categories of the Class issues described in this Declaration shall be determined in the reasonable discretion of the Executive Board based on the provisions of the Association Documents.

(d) The votes allocated to a Unit shall be held by the Owner(s) of such Unit and may not be separated from the Unit to which the votes are allocated. The votes allocated to a Unit may be transferred or encumbered only in connection with the conveyance or encumbrance of such Unit. Any transfer or encumbrance of votes in the Association, other than as permitted in this Section 5.01(d), shall be void and have no force or effect.

(e) Notwithstanding the terms and conditions of Section 5.01(d), the Owner of a Unit may appoint an agent (which shall be another Owner in the Condominium, or, with respect to Owners of Commercial Units, its lessee or any other Person as provided in Section

5.03(e)) to vote the votes allocated to the Owner's Unit by a duly executed proxy, in such form as the Association may reasonably require, timely delivered to the Association.

(f) Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

(g) The Association shall have no voting rights for any Unit owned by the Association.

5.02 Residential Voting.

(a) Regardless of the number of Owners of a Residential Unit, each Residential Unit shall be allocated one (1) vote. The votes allocated to each of the Initial Units are set forth on Exhibit C attached hereto.

(b) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the number of votes allocated to each Residential Unit, after such addition, withdrawal, increase or decrease, shall be recalculated such that each Residential Unit shall be allocated one (1) vote, regardless of the number of Owners of that Residential Unit.

(c) Fractional voting shall not be allowed for any vote allocated to a Residential Unit. If the Owners of a Residential Unit cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Residential Unit casts the vote for that Residential Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Residential Unit, unless an Owner of that Residential Unit makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than one vote is cast for any Residential Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

5.03 Commercial Voting.

(a) The total number of votes allocated among the Commercial Units shall be calculated as follows:

$$\text{Total Number of Votes for all Commercial Units} = .51 \times \frac{\text{Number of Votes Allocated to the Residential Units}}{\text{Residential Units}}$$

(b) Each Commercial Unit shall be entitled to the number of votes calculated as follows:

$$\text{Number of Votes} = \frac{\text{Total Number of Votes for all Commercial Units}}{\text{Total Area of Commercial Units}} \times \frac{\text{Area of the Commercial Unit}}{\text{Total Area of Commercial Units}}$$

(c) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the total number of votes allocated among the Commercial Units, and the number of votes allocated to each Commercial

Unit, as applicable, after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formulas set forth in Sections 5.03(a) and (b).

(d) Except as set forth in Section 5.03(e), fractional voting shall not be allowed for any votes allocated to a Commercial Unit. If the Owners of a Commercial Unit cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Commercial Unit casts the votes for that Commercial Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Commercial Unit, unless an Owner of that Commercial Unit makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than the votes allocated to a Commercial Unit are cast for the Commercial Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

(e) The Owner of a Commercial Unit may appoint its lessee or another Person as its agent to vote all or any portion of the votes allocated to the Commercial Unit by proxy in accordance with the terms and conditions of Section 5.01(e). In that regard, fractional voting shall be allowed for the votes allocated to the Commercial Unit. Notwithstanding the foregoing, if more votes are cast for the Commercial Unit than are allocated to the Commercial Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

5.04 Secret Ballots. When any vote is taken by the Owners for the election of a contested position on the Executive Board, such election shall be held by secret ballot. In addition, upon the request of Owners holding at least twenty percent (20%) of the votes in the Association present at the meeting or represented by proxy, any other vote to be taken by the Owners shall be conducted via secret ballot. The results of any vote taken by the Owners shall be counted by a neutral third Person or a committee of Owners who are volunteers selected or appointed at an open meeting in a fair manner by the chairperson of the Executive Board or another person presiding during that portion of the meeting. The volunteers shall not be Executive Board members and, in the case of a contested election for a Director, shall not be candidates. In announcing the results of any vote taken by the Owners, no identifying information shall be disclosed by the Association that would reveal how any particular Owner voted.

ARTICLE VI EXECUTIVE BOARD

6.01 Powers of the Executive Board.

(a) Except as provided by law or in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b) The Executive Board may not act on behalf of the Association to:

(i) amend this Declaration;

(ii) terminate the Association, this Declaration or the Condominium;

- (iii) elect Directors to the Executive Board; or
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

6.02 Number of Directors; Class Interests.

- (a) The Executive Board shall consist of the following three (3) Directors:
 - (i) two (2) Directors elected by and representing the Class consisting of Owners of the Residential Units (each, a “**Residential Director**”); and
 - (ii) one (1) Director elected by and representing the Class consisting of Owners of the Commercial Units (the “**Commercial Director**”).

(b) During the Declarant Control Period, all members of the Executive Board shall participate in all Association affairs without regard to the provisions of this Section and any specific responsibilities of any Class of Directors shall be undertaken by the entire Executive Board, and the entire Executive Board shall be entitled to so act. After expiration of the Declarant Control Period, all members of the Executive Board shall be entitled to participate in affairs which affect the General Common Elements or affecting all Classes of Owners. Each Class of Directors shall have the sole and exclusive authority on all matters which relate solely to that Class. Any determination by the Directors that a matter should be for consideration of the entire Executive Board, and not for the independent consideration of any particular Class of Directors, shall require, in addition to the affirmative vote of a majority of the voting Directors of the Executive Board, the affirmative vote of at least one (1) Director from the affected Class of Directors.

(c) If (i) a vote by the Executive Board to determine whether a matter should be for the consideration of the entire Executive Board results in an affirmative vote of a majority of voting Directors, but fails to result in the affirmative vote of any required Class Director, and (ii) a majority of all Directors vote within fifteen (15) days thereafter to submit such issue to arbitration, then the issue of whether a matter should be considered by the entire Executive Board shall be submitted to binding arbitration in Denver, Colorado under the auspices of JAMS in accordance with the JAMS Commercial or Engineering and Construction Arbitration Rules & Procedures, or, if JAMS is not available, the AAA in accordance with the AAA’s Commercial or Construction Industry Arbitration Rules, as appropriate by one (1) arbitrator. The decision of the arbitration shall be final and binding on the parties and judgment may be entered thereon in a court having jurisdiction over the Association. The cost and expense of arbitration shall be deemed an expense of the Association. Notwithstanding any other term in this Declaration to the contrary, if a matter involves an emergency requiring immediate action by the Executive Board, the entire Executive Board shall participate in the decision to take such action as is necessary to advance the interest of the Condominium as a whole pending the outcome of the arbitration proceeding, at which time such Directors as are determined to be entitled to participate in the decision shall resolve the issue.

6.03 Election of Directors.

(a) Subject to the terms and conditions of Sections 6.04 and 6.05, the Residential Directors and the Commercial Director shall be elected as set forth in the Bylaws.

(b) Each Director shall hold office until that Director's successor is elected and qualified, or until that Director's earlier death, resignation or removal.

6.04 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.04(b) and (c), but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Officers and Directors during the Declarant Control Period. The phrase "**Declarant Control Period**" means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) the date that is sixty (60) days after conveyance to Purchasers of seventy-five percent (75%) of the maximum number of Units that may be created by Declarant under this Declaration;

(ii) the date that is two (2) years after the last conveyance of a Unit by Declarant or a Successor Declarant in the ordinary course of business; or

(iii) the date that is two (2) years after any right to add new Units was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.04(a), not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created under this Declaration to Purchasers, one (1) Residential Director appointed by Declarant shall be replaced with a Residential Director elected by Owners other than Declarant.

(d) During the 30-day period immediately preceding the earliest to occur of (i) the date on which the Declarant Control Period expires, (ii) such other time as may be required under the Act, or (iii) such other time as Declarant may, in its sole discretion, determine to voluntarily surrender its right to appoint and remove Officers and Directors, all Directors shall have been or will be elected or appointed by vote of the Owners in the respective Class of Units (including Declarant to the extent Declarant owns one or more Units) in accordance with Section 6.02.

(e) Solely to the extent required by Applicable Law, not later than sixty (60) days after the end of the Declarant Control Period, Declarant shall deliver to the Association all

property of the Owners and the Association then held or controlled by Declarant, including (to the extent specifically enumerated in the Act) the following:

(i) the original, or a certified copy, of this Declaration and any amendments hereto;

(ii) the Articles of Incorporation, Bylaws, Rules and Regulations, policies, procedures, minutes of meetings of the Association or Executive Board and any other books and records maintained by Declarant for the Association;

(iii) an accounting for Association funds and financial statements, beginning on the date the Association first received any funds and ending on the date the Declarant Control Period expired, as more particularly described in in, and audited to the extent required by, the Act;

(iv) the funds of the Association or control thereover;

(v) all of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association, if any, or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of such property;

(vi) a copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the Improvements in the Condominium installed by Declarant or at Declarant's direction;

(vii) all insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;

(viii) copies of any certificates of occupancy that may have been issued with respect to the Condominium;

(ix) any other permits issued by governmental bodies applicable to the Condominium that are then in force or which were issued within one (1) year prior to the end of the Declarant Control Period;

(x) written warranties of the Contractor, suppliers, and manufacturers of and for the Condominium that are still effective;

(xi) a roster of Owners and known Mortgagees and their addresses and telephone numbers, if known, as shown in the Association's records;

(xii) employment contracts in which the Association is a contracting party, if any; and

(xiii) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services described in such contract.

6.05 Removal of Directors. Notwithstanding any provision of this Declaration or any other Association Document to the contrary:

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director elected or appointed by a particular Class may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote of all votes allocated to the Class who elected such Director.

6.06 Replacement of Directors.

(a) Vacancies on the Executive Board created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Executive Board created by the removal, resignation or death of a Director elected or appointed by a particular Class shall be filled by a Director elected by the Owners in such Class.

(c) Any Director appointed or elected pursuant to this Section 6.06 shall hold office for the remainder of the unexpired term of the Director that such Director replaced.

6.07 Notice and Opportunity to be Heard. Whenever this Declaration requires that an action of the Executive Board or the Association be taken after “**Notice and Opportunity to be Heard,**” the procedures set forth in the Rules and Regulations with respect thereto shall be followed. If the affected Owner is not satisfied with the decision of the Executive Board or the Association, the matter shall be resolved in accordance with ARTICLE XIX.

ARTICLE VII ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Owner, by virtue of its ownership of a Unit (regardless of whether it may be expressly stated in any instrument of conveyance), shall be deemed to have covenanted and agreed to pay to the Association all Assessments and other charges that the Association is required or permitted to levy or impose on such Owner or such Owner’s Unit pursuant to this Declaration or any other Association Document.

(b) Notwithstanding the definition of the term “**Owner**”:

(i) a Person who acquires a Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date of the foreclosure sale; and

(ii) a Person who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or

permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date on which the Owner of the Unit executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or any portion of the Association Property or by abandoning a Unit against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit.

(e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, experts, consultants, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's General Common Expenses shall be allocated among the Units as set forth in this Section 7.02(a). The Share of General Common Expenses allocated to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of General Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of all Units})} \times 100$$

(b) Except as otherwise set forth in this Declaration, the Association's Residential Common Expenses shall be allocated among the Residential Units as set forth in this Section 7.02(b). The Share of Residential Common Expenses allocated to a Residential Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of Residential Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of Residential Units})} \times 100$$

(c) Except as otherwise set forth in this Declaration, the Association's Commercial Common Expenses shall be allocated among the Commercial Units as set forth in this Section 7.02(c). The Share of Commercial Common Expenses allocated to a Commercial Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of Commercial Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of Commercial Units})} \times 100$$

(d) The Share of General Common Expenses, the Share of Residential Common Expenses, and the Share of Commercial Common Expenses allocated to the Initial Units is set forth on Exhibit C attached hereto.

(e) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the Share of General Common Expenses for all Units within the Condominium, the Share of Residential Common Expenses for all Residential Units and the Share of Commercial Common Expenses for all Commercial Units, as applicable, after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Sections 7.02(a), (b) and (c).

(f) Until the Association levies an Assessment, Declarant shall pay all Common Expenses.

7.03 Budgets.

(a) Prior to the first levy of an Assessment, and thereafter on or before October 1 of each calendar year, the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:

(i) the Executive Board's estimate of Common Expenses for the next calendar year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and

(iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Limited Assessments.

(b) Within ninety (90) days after adopting a proposed annual budget, the Executive Board shall mail, by first-class mail, or otherwise deliver, including posting the proposed budget on the Association's website, if any, a summary of the proposed annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed annual budget to the Owners. The Executive Board shall give notice of such meeting to the Owners as allowed for in the Bylaws. The proposed annual budget shall not require approval from the Owners and will be deemed approved by the Owners, unless at that meeting at least sixty-seven percent (67%) of all votes within the Association, whether or not a quorum is present, vote against the budget (as it applies to General Common Expenses). The Association shall likewise prepare budgets for the Commercial Common Expenses and the Residential Common Expenses in accordance with the foregoing. The budget for Commercial Common Expenses shall be deemed approved, unless at the meeting, at least sixty-seven percent (67%) of all votes allocated to the Commercial Units vote against such budget. The budget for Residential Common Expenses shall be deemed approved, unless at the meeting, at least sixty-seven percent (67%) of all votes allocated to the Residential Units vote against such budget.

(c) If the Owners fail to ratify any annual budget for any fiscal year prior to the beginning of that fiscal year, the Owners shall continue to pay periodic installments of

Assessments to the Association equal to the rate payable during the prior fiscal year multiplied by the CPI Adjustment Factor until such time as the applicable Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Association shall levy against each Unit the Assessments for the then current fiscal year and each Owner's periodic installments shall be adjusted as necessary to pay the new Assessment in equal periodic installments over the remainder of such fiscal year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such fiscal year.

(d) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.03(b), the Executive Board may adopt a proposed amendment to the annual budget, and within ninety (90) days after adopting a proposed amendment to the annual budget, the Executive Board shall deliver a summary of the proposed amendment to the annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment to the annual budget. Only those Owners whose Assessments shall be affected by such amendment shall be entitled to object to the amendment. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed amendment to the annual budget to the Owners. The proposed amendment to the annual budget shall not require approval from the Owners and will be deemed approved by the Owners, unless at that meeting Owners holding at least sixty-seven percent (67%) of all votes of Owners entitled to object to the amendment, whether or not a quorum is present, vote against the amendment.

(e) If the Owners ratify an amendment to an annual budget pursuant to Section 7.03(d), the amount of the Assessments levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

7.04 General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 7.03(b), the Association shall levy an assessment for General Common Expenses (a "**General Assessment**") on each Unit. The amount of the General Assessment levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of General Common Expenses, by

(ii) the Share of General Common Expenses allocated to that Unit pursuant to Section 7.02.

(b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(c) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of General Common Expenses allocated to such Owner's Unit.

7.05 Limited Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as “**Limited Assessments.**”

(b) The Association shall levy a Limited Assessment for Residential Common Expenses against the Residential Units. The amount of the Limited Assessment for Residential Common Expenses levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Residential Common Expenses, by

(ii) the Share of Residential Common Expenses allocated to that Unit pursuant to Section 7.02(b).

(c) The Association shall levy a Limited Assessment for Commercial Common Expenses against the Commercial Units. The amount of the Limited Assessment for Commercial Common Expenses levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Commercial Common Expenses, by

(ii) the Share of Commercial Common Expenses allocated to that Unit pursuant to Section 7.02(c).

(d) Additionally and notwithstanding anything to the contrary contained in this ARTICLE VII, if any Common Expenses or other charge incurred by the Association is attributable to (i) the provision of utility or similar services to one or more but fewer than all of the Units or Owners, or (ii) the management, operation, construction, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Association may levy an Assessment for such Common Expense or other charge against the Unit or Owner to which the Limited Common Element is allocated or to which such Common Expense or other charge is attributable, and if such Common Expense or other charge is attributable to more than one Unit or Owner, then all such affected Owners shall pay their proportionate share thereof based on square footage formulas or in any other equitable proportion as the Association reasonably deems appropriate.

(e) Limited Assessments shall be paid as and when required by the Association.

(f) The failure of the Association to levy a Limited Assessment shall not be deemed a waiver, modification, or release of an Owner’s liability for the Common Expense for which such Limited Assessment is or would be attributable.

7.06 Special Assessments.

(a) The Assessments that the Association may levy and collect pursuant to this Section 7.06 are referred to in this Declaration as “**Special Assessments.**”

(a) If, at any time, due to unexpected circumstances, the Executive Board believes that Common Expenses for a calendar year will exceed the revenues of the Association for that calendar year (or any amounts held in reserve that the Executive Board determines to allocate to such circumstance), then the Executive Board may cause the Association to levy and collect a Special Assessment in an amount equal to the amount of such excess.

(b) If the Association levies a Special Assessment for General Common Expenses, the Owners shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the Special Assessment; by

(ii) the Share of General Common Expenses allocated to that Unit pursuant to Section 7.02(a).

(c) If the Association levies a Special Assessment for Residential Common Expenses, the Owners of the Residential Units shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the Special Assessment; by

(ii) the Share of Residential Common Expenses allocated to that Unit pursuant to Section 7.02(b).

(d) If the Association levies a Special Assessment for Commercial Common Expenses, the Owners of the Commercial Units shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

(i) the amount of the Special Assessment; by

(ii) the Share of Commercial Common Expenses allocated to that Unit pursuant to Section 7.02(c).

(e) The failure of the Association to levy a Special Assessment shall not be deemed a waiver, modification, or release of an Owner’s liability for the Common Expense for which such Special Assessment is or would be attributable.

7.07 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense or other expense incurred by the Association is caused by:

(i) the negligence or misconduct of an Owner or an Owner's Permittee; or

(ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Permittee,

the Association may recover such Common Expense or other expense from such Owner by levying an additional assessment against the Owner's Unit. Any such assessment levied by the Association and each fine, penalty, or fee imposed upon an Owner for the violation of any covenant or condition of any Association Document are each referred to herein as a "**Default Assessment.**"

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.03.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided Notice and Opportunity to be Heard. Subject to the requirements of the Act, Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

7.08 Assignment of Assessments. The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

7.09 Assessment Lien.

(a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Association Document (the "**Assessment Lien**"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Unit, except:

(i) liens and encumbrances recorded prior to the recordation of this Declaration;

(ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Act provides otherwise; and

(iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

(c) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Unit. No further recordation of any claim of any Assessment Lien is required.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured thereby becomes due.

(e) This Section 7.09 does not prohibit:

- (i) actions or suits to recover sums secured by an Assessment Lien; or
- (ii) the Association from taking a deed in lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

(g) Subject to Applicable Law, an Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

7.10 Waiver of Homestead Exemptions. By acceptance of any instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes.

7.11 Estoppel Certificates; Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee within fourteen (14) days after the mailing or delivery of written request by such party, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered address, a statement setting forth any or all of the following information as may be requested by such party:

(i) the amount of unpaid Assessments currently levied against the Owner's Unit;

(ii) whether, to the knowledge of the Association, the Owner or the Owner's Unit is in violation of any of the provisions of the Association Documents;

(iii) the amount of the Assessments, including installment payments thereof paid by the Owner during the fiscal year in which the request is received;

(iv) the amount of any delinquent Assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Unit as provided by the Association Documents;

(v) whether all insurance requirements established by this Declaration are being satisfied; and

(vi) a listing of each of the Association Documents, and amendments thereto, with recording information, if applicable.

(vii) If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments that were due as of the date of the request.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than sixty (60) days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.12 Reserve Funds. The Association shall have the right to maintain, and collect through Assessments, (i) capital reserve funds for the repair, restoration and replacement of Common Elements and the Association Property, and (ii) a general operating reserve fund. The Association shall at all times separately account for any reserve funds for the repair, restoration and replacement of Limited Common Elements appurtenant to the Residential Units and for any reserve funds for the repair, restoration and replacement of Limited Common Elements appurtenant to the Commercial Units such that Residential Unit Owners shall not be required to contribute to the reserve funds for Limited Common Elements appurtenant to the Commercial Units and the Commercial Unit Owners shall not be required to contribute to the reserve funds for the Limited Common Elements appurtenant to the Residential Units. The Association may increase the reserve funds or replace funds withdrawn from the reserve funds with funds collected through Assessments. The Association shall also have the right to collect and maintain working capital funds in order to meet its expenses or to purchase necessary equipment and services.

7.13 Working Capital. The first Purchaser of each Residential Unit who acquires such Residential Unit from Declarant shall make a non-refundable contribution of working capital to the Association in an amount equal to three (3) monthly installments of General Assessments allocated to such Unit at the time of sale (regardless of whether or not assessments have

commenced as provided herein)(the “**Working Capital Contribution**”). The Association shall have no obligation to pay interest on such Working Capital Contribution to any Owner, or to hold the Working Capital Contribution in a separate account. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit, and may be used for the benefit of the Association as the Executive Board deems appropriate, including to meet its expenses or to purchase equipment, property or services. The Working Capital Contribution shall be in addition to, not in lieu of, General Assessments and shall not be considered an advance payment of such Assessments. Payments of Working Capital Contributions shall not be credited against, or relieve Owners from, their obligation to pay Assessments levied against Units by the Association. Upon the sale of a Unit from one Owner to another, the Association shall not be obligated to return to the transferor any Working Capital Contribution that the Association received from the transferor or from any of the transferor's predecessors in interest.

7.14 Disputes Regarding Assessments. The Executive Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Association and the Owners.

ARTICLE VIII UTILITIES AND OTHER SERVICES

8.01 Utility and Mechanical Systems.

(a) For avoidance of doubt, each Utility and Mechanical System serving the Community shall be deemed a General Common Element until such utility physically separates to either: (i) serve only one Unit within the Community, (ii) serve less than all Units within the Community, or (iii) serve a Common Element. Upon such separation, if such Utility and Mechanical System serves only one Unit and/or its Limited Common Elements, it shall be deemed a Limited Common Element allocated to that Unit. If upon such separation, such Utility and Mechanical System serves a General Common Element, it shall be deemed a General Common Element. If upon such separation, such Utility and Mechanical System serves more than one (but less than all) Units or Limited Common Elements appurtenant thereto, it shall be deemed a Limited Common Element appurtenant to such Units.

(b) Any Utility and Mechanical System which solely and directly serves one or more (but less than all) Units and/or the Limited Common Elements appurtenant thereto shall be the financial responsibility of the applicable Unit Owner(s) served by such Utility and Mechanical System.

(c) Notwithstanding anything to the contrary in this Declaration, any Utility and Mechanical System located entirely within a Unit and exclusively serving such Unit is a part of such Unit, and is not part of the Common Elements, and as such shall be maintained by, and be the responsibility of, the Owner of such Unit.

8.02 Water, Sewer and Gas.

(a) *Units.* The Association shall be responsible for obtaining water, sewer and gas services for all Units and, as applicable, the Limited Common Elements allocated thereto, which services shall be separately sub-metered. The Common Expenses incurred by the Association for the provision of water, sewer and gas services to the Residential Units and the Limited Common Elements allocated thereto shall be allocated among the Units in accordance with in accordance with the periodic sub-meter readings for each Unit and charged to the Owners of such Units as Limited Assessments and charged to the Owners of the Residential Units as Limited Assessments.

(b) *General Common Elements.* The Association shall determine what, if any, water, sewer and gas services are necessary for the General Common Elements and shall be responsible for obtaining that service. The Common Expenses incurred by the Association for the provision of such services shall be allocated among the Units in accordance with each Unit's Share of General Common Expenses (without regard to usage) and charged to the Owners of the Units as General Assessments.

8.03 Electric.

(a) *Units.* The Association shall be responsible for obtaining electric services for all Units and, as applicable, the Limited Common Elements allocated thereto, which services shall be metered separately from the electric services provided to the General Common Elements. Each Unit Owner shall be responsible for paying directly to the utility company providing the same all costs, expenses, fees, rates and other charges incurred in connection the electric services to such Owner's Unit (and Limited Common Elements allocated thereto) in accordance with in accordance with the periodic meter readings.

(b) *General Common Elements.* The Association shall determine what, if any, electric services are necessary for the General Common Elements and shall be responsible for obtaining that service. The Common Expenses incurred by the Association for the provision of such services shall be allocated among the Units in accordance with each Unit's Share of General Common Expenses (without regard to usage) and charged to the Owners of the Units as General Assessments.

8.04 Cable, Internet and Telephone. Each Owner of a Unit shall be responsible for obtaining cable television, internet/data and telephone services for its Unit and the Limited Common Elements allocated thereto and shall pay directly to the service company providing such services all costs, expenses, fees, rates and other charges incurred in connection therewith, including connection fees. Notwithstanding the foregoing, Declarant or the Association shall have the right to enter into agreements with a third party service provider for any or all of the foregoing services. Each Owner understands and acknowledges that such agreements may require mandatory participation by all Owners and/or result in charges to the Association that are included in the Common Expenses.

8.05 Trash and Recycling. Any and all portions of the Condominium accommodating trash or recycling storage shall be deemed a General Common Element. The Association shall

obtain trash and recycling services for the Residential Units, and may obtain any other utility service that is not separately metered or is otherwise not separately provided to Units, and shall allocate the costs of such service to the Unit(s) receiving the service based upon reasonable estimates of use, if reasonably feasible, or pro rata based on the number of Units involved, or as otherwise may be reasonable and equitable under the circumstances, and charge such amounts to the Owners of such Units as Limited Assessments. The Association does not provide trash removal services for Owners of Commercial Units or their Permittees.

8.06 Other Utilities. If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner as it may determine appropriate.

ARTICLE IX MAINTENANCE OF COMMON ELEMENTS AND UNITS

9.01 Maintenance of Common Elements. Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association Property in good order and condition in the manner customary of a first-class, mixed-use project in Steamboat Springs, Colorado (including causing to be provided regular snow removal, and canopy and window cleaning) and shall otherwise manage and operate the Common Elements and the Association Property as it deems necessary or appropriate and in accordance with Applicable Law. In this regard, the Association may:

- (a) subject to Section 10.07(d), construct, modify, add to, repair, replace, upgrade or renovate any improvements that are located on or constitute a part of any Common Element;
- (b) plant and replace trees, shrubs and other vegetation on any Common Element;
- (c) place, maintain and replace signs upon any Common Element;
- (d) adopt and enforce Rules and Regulations regulating the use of Common Elements; and
- (e) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

Notwithstanding anything to the contrary in this Section 9.01, unless the Association chooses to do so, (i) the Owner of each Residential Unit shall be responsible for cleaning (i.e., sweeping and/or washing) any balcony or terrace that is a Limited Common Element allocated exclusively to such Residential Unit, and (ii) the Owners of the Commercial Units shall be responsible for the maintenance of any trash area provided for use thereby, whether or not labeled as LCE-C on the Map.

9.02 Maintenance of Condominium Systems. The Association shall enter into and shall at all times maintain such service and maintenance contracts with qualified Persons for the maintenance and repair of all Improvements owned or controlled by the Association as are reasonably required to maintain such Improvements in good working order and repair. The failure by the Association to maintain such contracts for any such Improvement shall constitute a waiver by the Association and all Owners to assert any design defect or construction defect regarding that Improvement against an Applicable Party pursuant to ARTICLE XIX. Declarant shall have the right to inspect the maintenance log during normal business hours upon reasonable notice to the Association.

9.03 Maintenance of Units. Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair its Unit (including all fixtures located therein). If, in the reasonable judgment of the Association or Declarant, an Owner fails to maintain the Owner's Unit or the improvements located thereon in good order and repair, and such failure remains uncured for more than thirty (30) days after the delivery of written notice thereof to such Owner, the Association or Declarant may enter upon such Unit, or the Limited Common Elements appurtenant thereto, and perform such maintenance or repair as the Association or Declarant deems necessary or advisable and charge all costs and expenses incurred by the Association in connection therewith to such Owner. The Owner shall pay the same within thirty (30) days after its receipt of an invoice therefor. Any such charges levied by the Association shall be deemed a Default Assessment. Neither Declarant nor the Association shall have any liability whatsoever to any Person in connection with the exercise of the rights set forth in this Section.

9.04 Mechanic's Liens and Indemnification. No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same or against the Common Elements. Each Owner shall indemnify, defend and hold harmless each of the other Owners and any Mortgagee thereof from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in, or equipment used at, the Owner's Unit at the Owner's request. The Association may enforce such indemnity by collecting from the Owner who suffers or allows such a lien the amount necessary to discharge the lien and all costs of enforcement, including attorneys' fees and costs, incidental thereto. If such amount is not promptly paid, the Association shall have all rights and remedies available to it for a failure to pay an Assessment.

9.05 Maintenance Recommendations. All maintenance and repair work performed by the Association and Owners shall be performed in accordance with and as specified in the Maintenance Recommendations or, if not addressed in the Maintenance Recommendations, as is appropriate to maintain the functionality and prolong the life of the improvement in question and include taking all other actions necessary to maintain the improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. The Association shall regularly inspect the Common Elements, and each Owner shall regularly inspect its Unit and the Limited Common Elements appurtenant thereto, as required or recommended under the Maintenance Recommendations and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair. The Executive Board shall be authorized, from time to time, to make

appropriate revisions to the Maintenance Recommendations based on the Executive Board's review thereof in order to update the Maintenance Recommendations to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality items to which the Maintenance Recommendations pertains. So long as Declarant owns any Unit, Declarant shall also be entitled to make recommendations to the Executive Board for the amendment, revision, or supplementation of the Maintenance Recommendations. The Executive Board shall also be authorized and empowered to adopt additional maintenance schedules and protocols for routine maintenance tasks, so long as such schedules or protocols are consistent with requirements that may be imposed by the Maintenance Recommendations. The Association and each Owner understand, assume the risk, and agree that, if the Association or such Owner fails to follow the inspection, maintenance, or repair requirements and standards contained in the Maintenance Recommendations and such failure causes damage to the Condominium, the Common Elements, the Units, any Improvement within Condominium or other property (including personal property), the resulting damage shall not be deemed to be the result of a design or construction defect.

ARTICLE X COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions. Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this ARTICLE X shall apply to all Units and Common Elements.

10.02 Association Documents. Each Owner shall comply with, and shall require its Permittees to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Unit.

10.03 Other Documents and Restrictions. Each Owner shall comply with, and shall ensure that its Permittees comply with, and each conveyance of the fee simple interest in and to a Unit or any lessee's interest under a lease of a Unit shall be subject to, the following, as the same may be amended from time to time:

- (a) the terms and conditions of the Association Documents;
- (b) any and all protective covenants, easements, reservations and restrictions of record; and
- (c) Applicable Law.

10.04 Notice of Conveyance, Assignment or Encumbrance.

- (a) Promptly after a conveyance of a Unit or portion thereof, the grantee shall furnish a copy of the conveyance instrument to the Association.
- (b) Promptly after an encumbrance of a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage or other document creating the encumbrance.

10.05 Use of Residential Units.

(a) Except as otherwise expressly permitted by this Declaration, Residential Units may be used for residential purposes only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner of a Residential Unit may:

(i) subject to Section 10.21, use such Residential Unit for a professional or home occupation, as long as Applicable Law permits such use, such use complies with Applicable Law, and no nuisance or unreasonable inconvenience to other residents of the Condominium is created thereby, and such use complies with the Rules and Regulations, provided that no Residential Unit may be used for “day care,” “child care” or “pet care” services, whether licensed or unlicensed; and

(ii) subject to Section 10.05(b), lease such Residential Unit on such terms and conditions as such Owner may determine, for the residential purposes described herein, including for short term transient occupancy. The provisions of this subsection 10.05(a)(ii) may only be amended by an affirmative vote of Owners holding at least sixty-seven percent (67%) of the votes allocated to all Units, including Owners holding at least sixty-seven percent (67%) of the votes attributable to the Residential Units.

(b) No Owner of a Residential Unit may lease, rent, license or “home share” a Residential Unit that in any manner violates Applicable Law, including, without limitation, any violation of occupancy limits or municipal rental regulations. Any lease or other agreement granting an occupancy right is subject to the terms of the Association Documents and the failure of the lessee to comply with the terms of such documents shall constitute a default of such lease or other agreement enforceable by the Association or by the lessor, or by both of them, including but not limited to eviction of the lessee from the Residential Unit. Both the owner of the Residential Unit and the lessee(s) shall be jointly and severally liable to the Association for any and all violations of any Association Document or damages to the Common Elements or any property within or constituting the Common Elements caused by said lessee(s). Leasing of a Residential Unit shall not relieve the Owner such Residential Unit of his or her rights, responsibilities and obligations under the Association Documents, including, but not specifically limited to, the duty to pay Assessments levied or fines imposed, and the same shall be as fully enforceable as to such owner as though owner were itself occupying the Residential Unit. The Executive Board shall be furnished with a copy of such lease or agreement, upon its request, together with a statement setting forth (1) the term of the lease or agreement, and (2) the names, telephone numbers and driver’s license numbers of all persons to occupy the Residential Unit under the terms of the lease or agreement.

(c) It shall be permissible for the Declarant to maintain, during the period of its sale and rental of Units in any portion of the Condominium, one or more Residential Units as sales and rental models and offices and for property maintenance purposes. One or more Units in the Condominium may be maintained for the use of the Association in fulfilling its responsibilities.

10.06 Use of Common Elements and Association Property.

(a) General Common Elements, Limited Common Elements, and the Association Property may only be used for the purposes for which the Common Elements and the Association Property are intended. Notwithstanding the preceding sentence, neither an Owner nor a Permittee may use any Common Element or any portion of the Association Property in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements or the Association Property, as the case may be. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Permittees to cause, waste to any Common Element or any portion of the Association Property. The Owners' rights to use the Common Elements and the Association Property are subordinate and subject to all of the rights and powers of the Association with respect to the Common Elements and the Association Property, including the Association's right and power to adopt rules regulating the use of the Common Elements and the Association Property.

10.07 Construction and Alterations.

(a) Except as otherwise expressly permitted in this Declaration, an Owner of a Unit may not make any improvement or alteration to a Common Element, or any improvement or alteration to its Unit that affects any Common Element or any other Unit, without the prior written consent of the Executive Board.

(b) Notwithstanding Section 10.07(a), an Owner who owns adjoining Units may, with the prior written consent of the Executive Board, remove or alter any intervening partition, even if the partition in whole or in part is a Common Element, provided that those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Condominium, except that, prior to the removal of any intervening partition that would have the effect of combining two or more Residential Units into a single Residential Unit, such Owner shall seek and receive all approvals therefor under Applicable Law.

(c) Without limiting the generality of Sections 10.07(a) and (b), and subject to the rights of Owners of Commercial Units set forth in Section 10.20, an Owner of a Unit may not, without the prior written consent of the Executive Board, not to be unreasonably withheld or delayed:

(i) install or erect any improvement, mechanical system or fixture that either protrudes beyond the boundaries of the Owner's Unit or is located wholly outside the Owner's Unit (even if located within a Limited Common Element that is allocated solely to the Owner's Unit);

(ii) undertake any work in or around its Unit or to any Common Elements which would jeopardize or adversely affect the structural integrity, soundness, safety, or operation of the any Building, Common Element or Improvement located on another Unit, or any easement benefiting another Unit or Common Element; or

(iii) undertake any repair or reconstruction work required by Section 13.02.

(d) In connection with an Owner's request for Executive Board approval of any of the foregoing items in Sections 10.07(a) through 10.07(c), the Owner shall submit to the Executive Board for its approval, plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvement or alterations (collectively "**Plans**"), together with the name and contact information for the architects, engineers, and contractors, as applicable, that prepared such Plans.

(e) Notwithstanding Section 10.07(a), and subject to the rights of Owners of Commercial Units set forth in Section 10.20, Owners of Units may, without the prior written consent of the Executive Board, improve or alter improvements within the interior boundaries of the Owners' Unit, provided that such improvements and alterations do not impair the structural or acoustical integrity of any Unit, any Common Element, or any utilities or other systems servicing any portion of the Common Elements or any other Unit. Plans for any for any such proposed improvement or alterations shall be submitted to the Executive Board, at its request, to enable the Executive Board to confirm compliance with the requirements of this Section 10.07(e).

(f) With respect to any Plans (including resubmission of disapproved Plans which have been revised) for improvements or alterations that require Executive Board approval, provided that all required information has been submitted, the Executive Board shall vote to approve or disapprove a Plan within thirty (30) days after submission of the Plans in full. Any disapproval shall be in writing and shall set forth in reasonable detail the nature of the disapproval.

(g) Subject to the rights of Owners of Commercial Units set forth in Section 10.20, in connection with any improvement or alteration performed by or on behalf of a Unit Owner pursuant to this Section 10.07, (i) the Unit Owner shall be liable for all damage caused to the Common Elements or any other Unit in the performance thereof, and (ii) the Executive Board may require the Unit Owner to post a bond or deposit as security for the Unit Owner's obligations., (iii) the Unit Owner shall cause its contractors to comply with the insurance requirements with respect to contractors set forth in Exhibit D, and (iv) all such work shall be subject to the construction hours limitations and other provisions with respect thereto contained in the Rules and Regulations.

(h) Neither the Executive Board nor the Association shall be liable for damages arising from, and anyone submitting Plans agrees that it will not bring any action or suit against the Executive Board, any Director or the Association to recover damages for, any mistake in judgment, negligence arising out of or in connection with the review, approval or disapproval of, or failure to approve, any Plans, or in connection with the enforcement of the covenants contained in this Section 10.07. Approval by the Executive Board shall not be deemed to constitute any representation or assurance of compliance with the requirements of Applicable Law, including local building codes, and it shall be the sole responsibility of the Owner or other person submitting Plans to comply therewith.

(i) Notwithstanding anything to the contrary set forth in this Section 10.07, no consents or approvals of the Association, the Executive Board, or any other Person shall be required in connection with the exercise by the Declarant, or any Successor Declarant, of any

rights reserved in this Declaration relating to the annexation of all or any portions of the Additional Property to the Condominium, or the alteration or modification of equipment and facilities located within the Additional Property in connection with such construction.

10.08 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Property that creates a nuisance. Without limiting the generality of the foregoing, but subject to the rights of Owners of Commercial Units set forth in Section 10.20:

(i) no lights shall be emitted that are unreasonably bright or cause unreasonable glare;

(ii) no sound shall be emitted that is unreasonably loud or annoying;
and

(iii) no odor shall be emitted that is unreasonably offensive.

(b) No Person shall conduct any activity on the Property that is or might be hazardous to any Person or property. Without limiting the generality of the foregoing:

(i) subject to Section 10.18, no open fires shall be allowed to exist at the Property;

(ii) no firearms may be discharged; and

(iii) no disposal of hazardous materials may be made within the Property.

(c) No unsightliness shall be permitted at the Property. Without limiting the generality of the foregoing:

(i) all exterior mechanical equipment lines, wires, pipes and other facilities that are not located within the Condominium Parking Garage shall either be buried or enclosed;

(ii) no bicycles or other recreational equipment shall be stored on balconies or any other portion of the Condominium other than any storage areas designated therefor on the Map or by the Executive Board, or within a Unit; and

(iii) all garbage shall be disposed of in accordance with the terms and conditions of Section 10.14.

(d) Except with the written consent of the Executive Board, and subject to the rights of Owners of Commercial Units set forth in Section 10.20, no change in any window covering materials originally installed in the Units shall be permitted. Any draperies, curtains, window coverings, shutters, or blinds visible from the exterior of the Residential Units shall be of the type, color, material and design approved for use in the Condominium by the Executive

Board. No Owner of a Residential Unit shall be permitted to apply any window tint to the surface of any window without the prior written consent of the Executive Board.

(e) Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.08.

(f) By accepting an instrument of conveyance to a Unit, an Owner acknowledges that noises, lights and odors common to commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time. Such activities shall not be considered a nuisance under this Section 10.08.

(g) The Association shall have the power to grant variances from the terms and conditions of this Section 10.08 from time to time as it deems necessary.

(h) Notwithstanding anything to the contrary contained in this Declaration, but subject to Applicable Law, retail stores and other facilities located in the Commercial Units may be open for business with the general public during the hours of 5:00 a.m. through 2:00 a.m., or such additional hours as may be permitted under Applicable Law. Each Owner (i) acknowledges that the Condominium is a community with both residential and commercial uses, which commercial uses may generate an unpredictable amount of noise, odors and other nuisances, and (ii) waives any and all rights or causes of action against Declarant, the Association, and the Owners of Commercial Units caused by, arising out of or related to any such uses, noises, odors or other nuisances.

10.09 Signs.

(a) Subject to the rights of Owners of Commercial Units set forth in Section 10.20, no signs, flags or banners whatsoever shall be erected or maintained on the Property without the written consent of the Executive Board, except in accordance with the Rules and Regulations.

(b) Without limiting the generality of Section 10.09(a), no “For Sale” or “For Rent” signs shall be displayed on the exterior (including windows) of a Unit.

10.10 Compliance with Laws and Matters of Record. Nothing shall be done or kept at the Property in violation of any Applicable Law or any of the easements, licenses, agreements and covenants affecting the Community, including, without limitation, those set forth on Exhibit E attached hereto.

10.11 Compliance with Insurance. Subject to the rights of Owners of Commercial Units set forth in Section 10.20, except as may be approved in writing by the Association, nothing shall be done or kept at the Property that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance.

10.12 Subdivision, Rezoning and Timesharing.

(a) No Residential Unit may be subdivided, unless the subdivision has been approved by one hundred percent (100%) of the votes allocated to all Units and the proposed subdivision otherwise complies with this Declaration and all other Association Documents.

(b) Except as permitted in Section 10.20, no application for rezoning any portion of the Property, and no applications for variances or use permits, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by one hundred percent (100%) of the votes allocated to all Units and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) Use or occupancy of Units under timeshare, fractional ownership or interval exchange programs (whether the exchange is based on direct exchange of occupancy rights, cash payments, reward programs or other point or accrual systems) or other membership plans or arrangements (collectively, “**Occupancy Plans**”) through which a participant in the plan or arrangement acquires an ownership interest in the Unit with attendant rights of periodic use and occupancy or acquires contract rights to such periodic use and occupancy of the Unit or a portfolio of accommodations including the Unit, and use of a Unit for or under any such Occupancy Plans is prohibited.

(d) The covenants, conditions and restrictions set forth in this Section 10.12 shall not apply to Declarant’s development of the Property, to Declarant’s exercise of any Special Declarant Right or any other right reserved to Declarant in this Declaration, or to Declarant’s use or ownership of any Unit.

10.13 Vehicles and Parking.

(a) Any Parking Space allocated as a Limited Common Element to a Residential Unit may only be used for vehicular parking and utility functions in accordance with applicable provisions of this Declaration and reasonable rules (including remote entry, parking cards, stickers, other identification, fines and security measures) established from time to time by the Association. Notwithstanding anything to the contrary, the allocation of a Parking Space as a Limited Common Element to a Residential Unit shall not grant to the Owner of such Residential Unit any right to, and such Owner shall not, interfere with, disturb or alter any portion of the floors, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, or other portions of the Condominium Parking Garage constituting General Common Elements. Any Parking Space that is a Limited Common Element allocated to a Commercial Unit may be utilized by the Owner(s) and Permittees of the Commercial Unit to which it is appurtenant for vehicular parking, utility functions, storage, placement of equipment, and other similar uses related to the operation of such Commercial Units.

(b) A Residential Parking Space may not be transferred or conveyed apart from the transfer of the subject Residential Unit; provided, that an Owner of a Residential Unit shall have the right, subject to approval of the Executive Board, to license such Owner’s right to use a Parking Space allocated to such Owner’s Residential Unit on the conditions that (i) the

licensee is another Owner or the Association (each, an “**Acceptable Licensee**”) and (ii) any such license shall automatically terminate upon the transfer or conveyance of the Residential Unit to which such Parking Space is allocated as a Limited Common Element. No Owner of a Commercial Unit shall be permitted to convey, transfer or grant an easement over its Parking Spaces to anyone other than an Acceptable Licensee; provided, that the Owner of a Commercial Unit shall be permitted to lease such Commercial Parking Spaces to its tenants, and license such Commercial Parking Spaces to its Permittees.

(c) Notwithstanding anything to the contrary stated herein, with respect to those Accessible Parking Spaces that are Residential Common Elements and shown on the Map as “HC” or shown as “handicap,” “accessible” or “disabled” parking by way of a symbol (“**Accessible Spaces**”), such Accessible Spaces shall be subject to the rights of Declarant (for so long as Declarant owns a Unit primarily for the purposes of sale or lease) or the Association (at such time when Declarant no longer owns a Unit primarily for the purposes of sale or lease) requiring the Owner of the Unit to which such Accessible Space is appurtenant (hereinafter, the “**Original Owner**”), solely to the extent such Original Owner does not qualify under Applicable Law to use an accessible parking space in public facilities, to grant a license to use such Accessible Space to another Owner (hereinafter, the “**Disabled Owner**”), provided that (i) the Disabled Owner (or his or her occupant) qualifies under Applicable Law to use an accessible parking space in public facilities, (ii) the Disabled Owner provides the Original Owner with a license to use the Disabled Owner’s Parking Space, and (iii) upon such time that the Disabled Owner (or his or her occupant if such occupant is leasing such Owner’s Unit pursuant to the terms of this Declaration) no longer qualifies as provided in subsection (i) hereof, the license shall automatically expire and the Original Owner and the Disabled Owner shall use their respective, original Parking Spaces. Subject to the re-assignment provisions set forth herein, nothing set forth herein shall prohibit an Accessible Space from being allocated to a Unit owned by an Owner that does not qualify under Applicable Law to use an accessible parking space in public facilities, or the use by such Owner of such Accessible Space. THE OWNER OF ANY UNIT TO WHICH AN ACCESSIBLE SPACE IS APPURTENANT AND ANY MORTGAGEE OF SUCH ACCESSIBLE SPACE, BY ACQUIRING AN INTEREST IN SUCH ACCESSIBLE SPACE, IS DEEMED TO AGREE THAT THE ACCESSIBLE SPACE IS SUBJECT TO RE-ASSIGNMENT AS PROVIDED IN THIS SECTION 10.13(c) AND IS DEEMED TO CONSENT TO SUCH RE-ASSIGNMENT UPON THE TERMS AND CONDITIONS DESCRIBED HEREIN FOR ALL PURPOSES OF THIS SECTION, INCLUDING COMPLIANCE WITH APPLICABLE LAW. ANY SUCH OWNER SHALL BE DEEMED TO AGREE TO EXECUTE ANY INSTRUMENT OR DOCUMENT REQUESTED BY THE ASSOCIATION TO EVIDENCE THIS CONSENT.

(d) Inoperable vehicles are prohibited from being parked in the Condominium Parking Garage. For purposes hereof, a vehicle shall be considered “inoperable” if it is not capable of being driven under its own propulsion. Additionally, other than vehicles of an owner of a Residential Unit, no vehicles may be stored within the Condominium Parking Garage. A vehicle shall be considered “stored” if it remains at the Condominium Parking Garage without being driven for fourteen (14) consecutive days or longer without prior written Executive Board permission.

(e) Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by disabled persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a “car” or “passenger vehicle” classification or the equivalent by the Colorado Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes (other than (i) vehicles with commercial writings on their exteriors that are not otherwise prohibited, (ii) vehicles used in connection with the operation of businesses within the Commercial Units (which may only be parked in Parking Spaces that are Commercial Common Elements), and (iii) sheriffs, marshals, police officers’ or other emergency vehicles marked as such), are also prohibited from being parked in the Condominium Parking Garage, except in areas, if any, that may be designated by the Executive Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, and commercial vehicles shall be allowed temporarily within the Condominium Parking Garage during normal business hours for the purpose of serving any Unit or the General Common Elements; provided, however, that no such vehicle shall remain overnight or for any purpose unless prior written consent of the Executive Board is first obtained.

(f) If any vehicle is parked in violation of this Section or in violation of the other Association Documents, the Executive Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation, stating that after twenty-four (24) hours the vehicle may be towed or booted, and stating that continuing to park in violation may lead to the vehicle being towed without notice. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues the Executive Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle. The Person performing such towing shall comply with all Applicable Law in connection therewith, including any notification and signage requirements.

(g) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner’s Parking Space, is obstructing the flow of traffic, is parked in a Parking Space of another Owner, or otherwise creates a hazardous condition, or has received two (2) previous notices for parking inappropriately in the same manner, no notice shall be required and the Executive Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

10.14 Deliveries, Trash Removal and Other Services.

(a) Owners of Residential Units and their Permittees shall dispose of all trash, garbage and other waste material in the garbage chute or trash rooms located on the floor in which such Residential Unit is located or in such other place as may be approved under the Association Documents. The Association will provide trash removal from the garbage chute and trash rooms within the housekeeping areas to the dumpsters. Owners of Commercial Units and

their Permittees shall be responsible for disposing of all trash, garbage and other waste material in the dumpsters.

(b) Owners shall not, and shall not permit their Permittees, to litter on the Property. No burning of trash, garbage or other waste materials will be permitted at the Property. No storage of trash, garbage or other waste materials on the Common Elements, other than the trash dumpsters, will be permitted at the Property.

10.15 Exterior Storage; Storage Areas.

(a) No Owner of a Residential Unit shall store any materials or items on or in any Common Element, other than those Common Elements designed for that purpose, and then only in strict accordance with the terms and conditions of the Association Documents.

(b) Any Storage Area allocated as a Limited Common Element to a Residential Unit may not be assigned or transferred apart from that Residential Unit. Any subsequent sale or conveyance of the Residential Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the Storage Area allocated to such Residential Unit. Storage Areas may be reallocated among the Residential Units with the consent of the Association, the Owner, and First Mortgagee of each Residential Unit whose Storage Area assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act.

(c) Each Owner shall be responsible for maintaining the Storage Area allocated to such Owner's Residential Unit in a slightly condition, clean and free from debris of any kind. No Owner or Permittee shall store any explosives or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the Storage Area that would cause danger or nuisance to the storage areas within the Condominium. The Storage Areas shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code or health code. If hazardous substances are stored, used, generated or disposed of on or in the Storage Area or if the Storage Area becomes contaminated in any manner for which the Owner or Permittee is legally liable, the Owner or Permittee shall indemnify and hold harmless Declarant, the Association and the Executive Board from any and all claims, damages, fines, judgments, penalties, costs, liabilities and losses and any sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of such contamination.

10.16 Temporary Structures. No temporary structure, excavation, basement, trailer, travel trailer, mobile home, camper, motor home, shack or tent or other living unit shall be erected, placed or maintained on the Property except as may be necessary and authorized during construction of Improvements.

10.17 Animals. No animals, livestock, insects, rodents, poultry, reptiles, birds or other pets or animals may be kept, bred or maintained within any Unit except usual and domestic household pets (e.g. fish, dogs, cats, small birds kept in cages and similar small pets) may be kept within the Units. No animals shall be permitted on other portions of the Property, other than specific areas, if any, designated therefor, unless leashed and under the control of a responsible individual. The Executive Board shall have the authority to promulgate reasonable

regulations regarding the keeping of pets in a Unit, including regulations regarding the number, type/species and size of pets permissible, and procedures regarding resolution of nuisance claims by Owners regarding pets.

10.18 Grills; Solid-Fuel Burning Devices. Subject to Section 10.20(c)(i), other than electric barbecue grills, no barbecue grills are permitted to be used, kept and stored on any portion of the Property except as may be specifically permitted by the Executive Board in writing. Subject to Section 10.20(c)(i), no solid-fuel burning devices, such as charcoal grills and wood burning stoves or fireplaces, shall be used, kept or stored on the Property.

10.19 Smoking Prohibitions and Regulations. Smoking is absolutely prohibited in or on all portions of the Condominium. Smoking shall be deemed to include the use of smoke-producing or vapor-producing products such as, but not limited to, cigarettes, cigars, pipes, marijuana, hookah, and electronic smoking devices (e.g., vaping). Smoking shall not be deemed to include smoke-producing or vapor-producing products involved with customary cooking, grilling, or other household practices within a Residential Unit or cooking, grilling, or other permitted commercial uses within a Commercial Unit, or in their respective Limited Common Elements.

10.20 Commercial Units.

(a) Subject to Section 10.21, a Commercial Unit may be used and occupied for any commercial purposes permitted under Applicable Law. The Owner may lease, or enter into a management or other occupancy agreement with respect to, all or any portion of a Commercial Unit for such purpose. Any lease or other agreement granting an occupancy right shall be in writing and shall provide that the lease or agreement is subject to the terms of the Association Documents and shall state that the failure of the lessee to comply with the terms of such documents shall constitute a default and such default shall be enforceable by the Association, or by the Owner, or by both of them. If a tenant, manager or operator fails to comply with the provisions of the Association Documents (any such failure being referred to herein as a “**Violation**”), then, in addition to all other remedies which it may have, the Association shall notify the Owner in writing of any such Violation and demand that the same be remedied through the Owner’s efforts within a reasonable time set forth in such notice, which shall in no event be less than ten (10) days unless the Violation is an immediate nuisance or capable of immediate cure. If any Violation is not remedied within such period, then the Owner shall immediately thereafter, at the Owner’s own cost and expense, institute and diligently prosecute appropriate actions to abate or prevent such Violations. Such action shall not be compromised or settled without: (i) such Violations having been corrected or cured; and (ii) reasonable assurances that such Violations shall not continue. Failure by the Owner to fulfill the foregoing obligation shall be a violation of this Declaration, and the Executive Board shall have the right, but not the obligation, to institute and prosecute an action or actions: (y) for a restraining order and/or injunction against continued Violations by such tenant, manager or operator; and/or (z) for such damages as may have been sustained by the Association, or by the Owners or any of them as a result of such Violations, as attorney-in-fact for the Owners. Any such actions shall be at the sole cost and expense of the Owner whose tenant, manager or operator shall have committed such Violations, and all such costs and expense (including all reasonable attorneys’ fees) incurred by the Association in any such action shall be constitute a

Default Assessment on the particular Commercial Unit involved. The Association shall not be entitled to evict or dispossess any such tenant, manager or operator without the consent of the Owner whose tenant, manager or operator shall have committed any such Violations.

(b) Notwithstanding anything to the contrary contained in this Declaration, the Owner of a Commercial Unit may make improvements or alterations to such Commercial Unit or the Limited Common Elements allocated exclusively to such Commercial Unit without the consent of any Owner or the Association, on the conditions that:

(i) the improvement or alteration does not impair any other Unit or any Limited Common Element allocated to any other Unit;

(ii) the Owner of the Commercial Unit promptly repairs any damage to any General Common Element caused thereby at its cost and expense; and

(iii) the improvement or alteration complies with all applicable requirements of the Association Documents and Applicable Law.

If any such improvement or alteration will impair any other Unit or any Limited Common Element allocated to any other Unit, the Owner of the Commercial Unit may not make the improvement or alteration without the prior written consent of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements, that will be impaired thereby, as the case may be.

(c) Notwithstanding anything to the contrary in this ARTICLE X or elsewhere in this Declaration, the Owner of a Commercial Unit may:

(i) perform such activities within the Commercial Unit and any Commercial Common Elements appurtenant thereto as are common to or necessary for the conduct of commercial operations, including installation and use of gas or charcoal grills and wood burning stoves in connection with food preparation operations, and any lights, sounds and odors which result from such activities shall not violate the terms of this ARTICLE X;

(ii) notwithstanding any restrictions contained in Section 10.12(b), change the commercial use of its Commercial Unit without the consent of the other Owners or the Association and take all such related actions (subject to compliance with Applicable Law) required to effectuate such change in use;

(iii) erect and attach signs, banners, decorations and other similar items on the exterior of, projections from the exterior of, and Limited Common Elements appurtenant to, the Owner's Commercial Unit, without the approval of the Association or other Owners, provided that such signs, banners, decorations and other similar items otherwise comply with Applicable Law; and

(iv) apply for and obtain permits and licenses (e.g., liquor licenses) which are necessary or appropriate for the conduct of commercial activities in its Commercial Unit and in the Condominium in accordance with this Declaration and the other Association Documents, without obtaining the approval otherwise required under Section 10.12(b).

10.21 Prohibited Uses. Notwithstanding anything to the contrary set forth in this Declaration, none of the Units shall be used as an adult bookstore, adult photo studio, ambulance service, blacksmithing shop, bowling alley, dance hall, nightclub, discotheque, automobile or other vehicle repair facility, electric substation, fire station, gas regulator station, mortuary, pawn shop, bond or check cashing shop, police station, utility pumping station, marijuana cultivation, grow or dispensary operation or facility, or methamphetamine laboratory.

10.22 Declarant's Exemption. Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

- (a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights reserved to Declarant under this Declaration or any other Association Document; or
- (b) the conduct by Declarant or its employees or agents of any activity, including the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Condominium.

ARTICLE XI EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over Common Elements.

(a) Declarant hereby reserves for itself and any Successor Declarant(s) a general easement over, across, through and under the Common Elements to:

- (i) discharge Declarant's obligations under this Declaration;
- (ii) exercise any of Declarant's rights under this Declaration; and
- (iii) make improvements (including as necessary for construction staging) at the Property, the Additional Property or any other real estate owned by Declarant.

(b) Declarant hereby reserves for itself and any Successor Declarant(s) the right to:

(i) establish from time to time utility, drainage, access and other easements, permits or licenses over, across, through and under the Common Elements for Declarant and other Persons; and

(ii) create other reservations, exceptions and exclusions for the benefit of Declarant and other Persons,

(c) on the conditions that (A) the parties benefited by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Property by the Owners to the extent practicable; and (B) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any

improvements on the Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

(d) In addition, until such time as Declarant adds any portion of the Additional Property to the Condominium, Declarant shall have whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the Additional Property.

11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby reserves for itself and creates for the benefit of the Association and any utility or service company designated by Declarant a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all Utility and Mechanical Systems, including water, sewer, storm water drains and pipes, gas, snow melt, life/safety, telephone, electricity, fiber optic, high-speed internet access, data transmission, cable communication and any similar public or quasi-public improvements or facilities that service the Property or any portion thereof as well as any such lines and systems that service real property owned by Declarant, or other buildings or real property designated by Declarant. Declarant may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.02 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, Declarant, the Association or any utility or service company designated by Declarant may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units, the Common Elements or any real property owned by Declarant or any other party designated by Declarant. Notwithstanding anything to the contrary contained in this Section 11.02, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Property, except in accordance with the terms and conditions of Section 10.07. Declarant, the Association or any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant and other utility and service companies.

(c) If Declarant or any utility or service company furnishing utilities or services to the Property or any portion thereof or any real property owned by Declarant, or any other party designated by Declarant as permitted under Section 11.02(a) requests a specific easement by separate recordable document, Declarant or the Association, as applicable, shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

11.03 Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Unit and each Common Element to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Unit in connection with the easements described in Section 11.03(a) without reasonable prior notice to the Owner thereof, except in cases of emergency.

11.04 Easements for Commercial Unit Owners. Declarant hereby reserves for itself and grants to, and creates for the benefit of, the Owners of Commercial Units and their Permittees,

(a) a nonexclusive, perpetual easement across, through, over and under any and all General Common Elements and Commercial Common Elements, without the consent of any Owner or the Association, for the purposes of installation, operation, maintenance, repair and replacement of utility and mechanical service lines, equipment, facilities and systems serving the Commercial Units, including, without limitation, any electric, gas, water, sewer, telephone, cable communication, life/safety, heating, ventilating and air conditioning lines, wires, circuits, cables, conduits, ducts, vents, and any and all improvements related thereto, on the conditions that (i) the Owner or Permittee of the Commercial Unit utilizing such easement, at its sole cost and expense, shall repair, replace and restore any damage to the Common Elements caused by the exercise of easement rights granted hereby, and (ii) the Owner or Permittee of the Commercial Unit utilizing such easement shall use its best efforts to install, operate, maintain, repair and replace the facilities without disturbing the uses of the Owners, the Association, and other utility and service providers.

(b) a non-exclusive, perpetual easement to utilize any stairwells or elevators providing access from the Condominium Parking Garage, whether consisting of General Common Elements or Residential Common Elements, for ingress to, egress from, the Commercial Units.

11.05 Emergency Access Easement. Declarant hereby grants to, and creates for the benefit of, all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons, including the Association, a general easement to enter upon the Property in the proper performance of their duties.

11.06 Easements for Encroachments. To the extent that any Unit or Common Element, as constructed by Declarant, encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct. Notwithstanding the foregoing, no easement exists for any encroachment that is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Element(s) or Unit(s) burdened by the encroachment or for any encroachment which extends beyond the LCE Airspace Envelope of a Unit.

11.07 Recorded Easements and Licenses. The Property shall be subject to (i) all easements and licenses as shown on any recorded plat or map affecting the Property, and (ii) any other easements or licenses of record or of use as of the date of recordation of this Declaration.

The recording data for all presently recorded easements, licenses, agreements and covenants appurtenant to or included in the Condominium, or to which the Condominium is subject, have been set forth on Exhibit E attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

ARTICLE XII INSURANCE

12.01 Insurance Required to be Obtained by the Association. The Association shall obtain and maintain:

- (a) all insurance required to be obtained and maintained by the Association under the Act and as set forth on Exhibit D attached hereto; and
- (b) any additional insurance that the Executive Board deems necessary.

12.02 Casualty Insurance for Improvements.

(a) In accordance with Section 12.01(a), the Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the Common Elements (including all fixtures, improvements and alterations situated on or constituting a part of the Common Elements) and the so-called “bare wall” Units (including the structural and mechanical components of the Units, but excluding the finished interior surfaces of the walls, floors and ceilings of the Units, any interior fixtures, improvements or betterments installed or constructed in the Units and the contents of the Units) (collectively, the “**Association Insured Property**”), which insurance shall (i) provide coverage against any peril included within the classification of “all risks”; and (ii) include a waiver of subrogation rights by the insurer as to the Owners, Declarant, Contractors, and Design Consultants.

(b) Owners shall be responsible for obtaining and maintaining any casualty insurance that they desire for those Improvements located in or forming a part of their Units that are not part of the Association Insured Property, and for any fixtures, furnishings and equipment, other than fixtures and equipment that are part of the Common Elements, located within their Units.

12.03 Adjustments. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

12.04 Owners’ Policies. Each Owner of a Unit shall obtain at least the insurance coverages it is required to obtain pursuant to Exhibit D. Each Owner waives and releases all

claims against the Association to the extent such claim is covered by applicable insurance policies, regardless of whether damage loss or injury arose from the negligence or breach of any agreement by the Association. Each Owner acknowledges that insurance obtained by the Association does not obviate the need for an Owner to obtain separate insurance for such Owner's benefit.

ARTICLE XIII CASUALTY

13.01 Casualty to Association Insured Property.

(a) The Association shall respond to any damage to, or the destruction of, the Association Insured Property in accordance with the terms and conditions of the Act. In accordance therewith, each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of collection and appropriate disposition of the proceeds of insurance maintained by the Association, negotiation and settlement of losses and execution of releases of liability, execution of all documents, and performance of all other acts necessary to purchase and maintain such insurance as well as dealing with any Association Insured Property upon its damage or destruction as provided in this Section 13.01.

(b) Any portion of the Association Insured Property that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(i) The common interest community created by this Declaration is terminated in accordance with this Declaration;

(ii) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(iii) There is an affirmative vote not to rebuild by (a) sixty-seven percent (67%) percent of the Owners, (b) every Owner of a Limited Common Element that will not be rebuilt, and (c) every Owner of a Unit that depends for structural support on the damaged or destroyed Association Insured Property; or

(iv) Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Association Insured Property rightfully demands all or a substantial part of the insurance proceeds.

(c) As soon as practicable after an event causing damage to or destruction of any part of the Association Insured Property, the Executive Board shall obtain an estimate or estimates that it deems reliable and complete for the costs of repair and reconstruction 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.

(d) Subject to Section 13.01(b), 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. In the event that, pursuant to Section 13.01(b), any portion of the Association Insured Property that is damaged or destroyed is not to be repaired or replaced, the Association will promptly raze the portions which are not restored or reconstructed and all other portions that cannot function properly without such demolished portions, remove all debris and take all other action required by good construction practice so that the areas which had been occupied by the damaged or destroyed Association Insured Property will be in a level, safe, and sightly condition that complies with Applicable Law, and shall be permitted to utilize any insurance proceeds in connection therewith.

13.02 Casualty to a Unit. To the extent that the Association is not obligated to make any such repairs or replacements, each Owner shall repair or replace any damage to, or the destruction of, the interior of its Unit, as soon as is reasonably practical after such damage or destruction occurs.

13.03 Casualty to Association Property. The Association shall respond to any damage to, or the destruction of, any Association Property in any manner deemed appropriate by the Executive Board.

ARTICLE XIV CONDEMNATION

14.01 Condemnation of All Units. If the entire Condominium is taken by condemnation or similar proceeding, the Condominium shall terminate as of the date of the taking, and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the terms and conditions of the Act.

14.02 Condemnation of Fewer Than All Units. If one or more Units, but less than the entire Condominium, is taken by condemnation or similar proceeding,

- (a) any condemnation award payable in connection therewith shall be paid,
- (b) the Interest in Common Elements appurtenant to those Units shall be reallocated, and
- (c) the Shares of Common Expenses allocated to the remaining Units shall be reallocated,

all in accordance with the terms and conditions of the Act.

14.03 Condemnation of Common Elements. If any Common Element is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and:

(a) first, shall be used by the Association to repair any damage to the Common Elements, as applicable, resulting from the condemnation or similar taking; and

(b) second, any remaining balance thereof shall be paid by the Association to the Owners (i) if attributable to General Common Elements taken, in accordance with the Owners' Interest in Common Elements and (ii) if attributable to any Limited Common Elements, equally to the Owners of the Units to which such Limited Common Elements were appurtenant at the time of such taking.

ARTICLE XV DECLARANT RIGHTS

15.01 Improvements. Declarant hereby reserves for itself and its successors and assigns the right, but not the obligation, to construct:

(a) any improvements shown on the Map;

(b) telephone lines and systems and fiber optic or other computer network lines and systems, together with related facilities and equipment that Declarant desires to construct, install or maintain on the Property; and

(c) any other buildings, structures or improvements that Declarant desires to construct on the Property or any other real estate owned by Declarant, regardless of whether the same ever become part of the Condominium.

15.02 Development Rights.

(a) Declarant hereby reserves for itself and any Successor Declarant:

(i) the right to amend this Declaration (by means of a supplemental declaration or otherwise, which may include such other provisions as the Declarant deems appropriate, including, without limitation, covenants, conditions, restrictions, requirements and/or other provisions, in addition to or different from those contained elsewhere in this Declaration, that apply or will apply to some or all of the property that is thereby being annexed to this Declaration, which other provisions referenced in the preceding sentence may be amended by Owners holding sixty-seven percent (67%) of the votes of the Units to which such other provisions apply) to add all or any portion of the Additional Property or such other additional real estate to the Condominium as permitted pursuant to Section 38-222 of the Act;

(ii) the right to amend this Declaration to create up to [___] additional Units and certain additional Common Elements on all or any portion of the Property, the Additional Property or any other real estate that Declarant may add to the Condominium pursuant to Section 15.02(a)(i);

(iii) the right to subdivide any Unit owned by Declarant;

(iv) the right to combine any Units owned by Declarant;

(v) the right to convert any Unit owned by Declarant into Common Elements;

(vi) the right to withdraw from the Condominium any portion of the Property, on a Unit by Unit basis, owned by Declarant and located within the Property prior to the conveyance of a Unit located within such portion of the Property to a Purchaser;

(vii) the right to withdraw all or any portion of the Additional Property;

(viii) the right to amend this Declaration to conform to or take advantage of any amendments to the Act or other Applicable Law; and

(ix) the right to create easements, permits, licenses and other property rights and reservations as described in ARTICLE XI.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment or supplement to this Declaration in accordance with the requirements of the Act.

15.03 Sales Offices and Models. Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices and models within any Unit owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Condominium, events and attractions, and any other businesses located within or outside the Condominium on any and all Improvements, and to erect and attach signs, banners, window boxes, billboards, decorations and other similar items on the exterior of the Improvements or projections from the exterior of the Improvements, and to project light and images on all portions of the Condominium, on the condition that such signs, banners, window boxes, billboards, decorations, projections and other similar items and their locations comply with Applicable Law.

15.04 Parking Spaces. Declarant hereby reserves for itself, its successors and assigns the right to establish, vacate and relocate Parking Spaces, provided that if a Parking Space has previously been allocated as a Limited Common Element to a Unit, the consent of the Owner of such Unit and any First Mortgagee holding a lien encumbering any portion of such Unit shall be required in connection with the vacation or relocation of such Parking Space. Declarant also hereby reserves for itself, its successors and assigns, the right to reallocate Parking Space(s) among Residential Units owned by Declarant in any manner desired by Declarant, prior to the sale of such Residential Units to their initial Owners (other than Declarant or its First Mortgagee), and may amend this Declaration or the Map accordingly, all without the consent of the Association, the Executive Board, any First Mortgagees, or any other Person. At such time as Declarant no longer owns any Residential Units within the Condominium, or any portion of the Additional Property, any Parking Spaces that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements.

15.05 Storage Areas. Notwithstanding any provisions in Section 10.15(b) to the contrary, Declarant hereby reserves for itself, its successors and assigns, the right to reallocate Storage Areas among Residential Units owned by Declarant prior to the sale of such Residential Units by Declarant to their initial Owners, and may amend this Declaration or the Map

accordingly, all without the consent of the Association, the Executive Board, any First Mortgagees, or any other person. At such time as Declarant no longer owns any Residential Units within the Condominium, any Storage Areas that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements.

15.06 Merger. Declarant hereby reserves for itself and its successors and assigns the right to merge or consolidate the Condominium with any other condominium.

15.07 Exercising Declarant Rights. Declarant may exercise its Special Declarant Rights and any other rights reserved to Declarant in this Declaration at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is twenty-five (25) years after the date on which this Declaration is recorded in the Official Records. Declarant may exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration. Declarant may exercise any Special Declarant with respect to any and all portions of the Property, including all of the Residential and Commercial Units and the Common Elements. If Declarant exercises any Special Declarant Right or any other right reserved to Declarant in this Declaration with respect to any portion of the Property or the Additional Property, Declarant may, but is not obligated to, exercise that Special Declarant Right or other right reserved to Declarant in this Declaration, as applicable, with respect to any other portion of the Property or the Additional Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this ARTICLE XV and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

15.08 Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right or any other right reserved to Declarant in this Declaration, without Declarant's prior written consent. Any action taken in violation of this Section 15.08 shall be void and have no force or effect.

15.09 Rights Transferable. Declarant may transfer any Special Declarant Right reserved to it under this ARTICLE XV or any other right reserved to Declarant in this Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVI MORTGAGEE PROTECTIONS

16.01 Benefit of First Mortgagees. This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

16.02 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee and Guarantor making such request:

(a) any condemnation loss or any casualty loss which affects a material portion of the Association Insured Property or any Unit in which an interest is held, insured or guaranteed by the First Mortgagee or Guarantor;

(b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and

(e) any judgment rendered against the Association.

16.03 Consent Required. Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of sixty-seven percent (67%) of the First Mortgagees (based on one vote for each Unit covered by a First Mortgage):

(a) by act or omission seek to abandon or terminate the Condominium, except to the extent provided by Applicable Law after condemnation or substantial casualty;

(b) except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change any Unit's Interest in Common Elements, Share of General Common Expenses, Share of Residential Common Expenses, Share of Commercial Common Expenses, or votes in the Association;

(c) subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights;

(d) abandon, subdivide, partition, encumber, sell, or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);

(e) use hazard insurance proceeds for losses to any portion of the Association Insured Property for other than repair, replacement, or reconstruction of such Association Insured Property, except as provided by the Act or this Declaration; or

(f) merge the Condominium with any other common interest community, except as permitted with respect to Special Declarant Rights.

16.04 Notice of Objection. Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within sixty (60) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

16.05 First Mortgagee's Rights.

(a) First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Unit encumbered by its First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

16.06 Condemnation. No Owner, or any other party, shall have priority over any rights of any First Mortgagee of the Unit pursuant to its First Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

16.07 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

(b) prevent the Association or the Executive Board from commencing, intervening or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of ARTICLE XIII.

16.08 Declarant Rights. No provision or requirement of this ARTICLE XVI shall restrict or limit any Special Declarant Rights or any other rights reserved to Declarant in this Declaration.

ARTICLE XVII
ENFORCEMENT AND REMEDIES

17.01 Enforcement.

(a) Enforcement of Declaration as between Owners and Association.

(i) Enforcement of the terms and conditions of this Declaration with respect to the Association shall be enforceable by any Owner by a proceeding for injunctive relief.

(ii) Enforcement of the terms and conditions of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant or by the Association by:

- (A) a proceeding for injunctive relief;
- (B) a suit or action to recover damages; and/or

(C) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Permittees from the use of any Common Elements and from participation in any Association affairs.

(iii) By virtue of ownership of a Unit, an Owner agrees to be bound by the terms and conditions of this Declaration. In addition to all other remedies provided to the Association in this Declaration, if an Owner fails to perform or observe any covenant or condition to be performed or observed by such Owner under this Declaration, any other Association Document, the Association shall have the following special rights and remedies:

(A) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty (30) days after the Owner receives a written notice of a Default Assessment therefor from the Association.

(B) The Association may, after Notice and Opportunity to be Heard, fine the Owner, as a Default Assessment, as set forth in the Rules and Regulations. The Owner shall pay any such fine to the Association within thirty (30) days after the Owner receives written notice of a Default Assessment therefor from the Association.

(C) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(D) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(iv) Notwithstanding anything to the contrary contained in this Declaration, any sums paid to the Association by an Owner shall be applied in the following order: first, to costs incurred by the Association to collect outstanding unpaid sums due to the Association; second, to satisfy any outstanding Default Assessments or other fines; third, to satisfy any outstanding interest accrued on any assessed but unpaid Assessments; and fourth, to satisfy any assessed but unpaid Assessments other than Default Assessments.

(v) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(b) Enforcement by Declarant. Enforcement of the terms and conditions of this Declaration that are intended to benefit Declarant shall be enforceable by Declarant, as applicable, by:

- (i) a proceeding for injunctive relief;

- (ii) a suit or action to recover damages; and/or
- (iii) any other remedy at law or in equity available to Declarant.

All rights and remedies of Declarant shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(iv) In addition to the foregoing rights and remedies, if an Owner or the Association fails to perform or observe any covenant or condition on such Owner's or the Association's part to be performed or observed under this Declaration or any other Association Document, which covenant or condition is intended to benefit the Declarant, Declarant may, but is not obligated to, cure such failure to comply at the Owner's or the Association's sole cost and expense. If Declarant cures any such failure to comply, the Owner or the Association, as applicable, shall pay to Declarant the amount of all costs incurred by Declarant in connection therewith within thirty (30) days after the Owner receives written notice of such amount from Declarant.

17.02 Attorneys' Fees. Other than with respect to any disputes governed by ARTICLE XIX, in the event of any dispute under or with respect to this Declaration or any other Association Document, to the extent provided for in, and subject to the provisions of, the Act, the prevailing party shall be paid by the nonprevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers, experts, consultants, or other professionals engaged by the prevailing party.

17.03 Interest. If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of eight percent (8%) per annum, or such other rate as the Executive Board may establish from time to time, from the due date of such unpaid amount until the date paid.

17.04 Nonwaiver. Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVIII TERM AND AMENDMENTS

18.01 Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property the earlier to occur of termination of the Declaration pursuant to Section 18.02.

18.02 Termination.

(a) Subject to the rights of First Mortgagees under ARTICLE XVI, the Owners may terminate the Condominium and this Declaration, by the affirmative vote of eighty percent (80%) of the votes allocated to all Units. If the necessary votes are obtained, the

agreement of the Owners to terminate the Condominium and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of the Act. Upon recordation of the termination agreement in the Official Records, the Condominium shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

(b) Notwithstanding the foregoing, the Owners may not terminate the Condominium during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(c) Further notwithstanding the foregoing:

(i) a termination of the Condominium and this Declaration shall not release the Property from the easements, covenants, conditions and restrictions set forth in ARTICLE X and such easements, covenants, conditions and restrictions shall survive the termination of this Declaration unless the Declarant consents to the release thereof in writing;

(ii) a termination of the Condominium and this Declaration shall not release the Property from the burdens created by ARTICLE XV and the Special Declarant Rights and any other rights reserved to Declarant in this Declaration shall survive the termination of this Declaration unless the Declarant consents to the release thereof in writing; and

(iii) a termination of the Condominium and this Declaration shall not affect the rights of Owners of Commercial Units created by Section 10.20, which rights shall survive the termination of this Declaration unless the Owners of Commercial Units consent to release such rights by an affirmative vote of at least sixty-seven percent (67%) of the votes allocated to all Commercial Units.

18.03 Amendments.

(a) Except for (i) provisions of this Declaration regarding the rights and obligations of Declarant, Contractors or Design Consultants, which may not be amended without Declarant's, the Contractors', or the Design Consultants' prior written consent, as applicable, (ii) provisions of this Declaration regarding the rights of the Owner of the Commercial Units, which may not be amended without the affirmative vote of at least sixty-seven percent (67%) of the votes allocated to all Commercial Units, and (iii) the provisions of ARTICLE XIX, which may not be amended except as set forth in Section 19.11, and subject to the rights of First Mortgagees under ARTICLE XVI, Owners may amend any provision of this Declaration at any time by an affirmative vote of Owners holding at least sixty-seven percent (67%) of the votes allocated to all Units, unless by its terms such provision requires a greater vote of the Owners for its amendment. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be recorded in the Official Records in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(b) Notwithstanding the terms and conditions of Section 18.03(a) above, Declarant may, without the approval of the Owners, amend:

(i) this Declaration and the Map to correct clerical, typographical, technical or other errors;

(ii) this Declaration to comply with any Applicable Law or the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association; and

(iii) this Declaration or the Map as otherwise provided by this Declaration or the Act.

ARTICLE XIX DISPUTE RESOLUTION

19.01 Dispute Resolution.

(a) Other than with respect to claims relating to enforcement of this Declaration under ARTICLE XVII, each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) to the procedures set forth in this Article and not to a court of law. By virtue of ownership of a Unit, each Owner agrees to abide by the terms of this Article. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose. BY VIRTUE OF OWNERSHIP OF A UNIT, EACH OWNER ACKNOWLEDGES THAT REQUIRING ALTERNATIVE DISPUTE RESOLUTION OF CONSTRUCTION DEFECT CLAIMS IS A SIGNIFICANT INDUCEMENT TO THE WILLINGNESS OF DECLARANT, THE CONTRACTORS, AND THE DESIGN CONSULTANTS TO DEVELOP, CONSTRUCT, AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE ALTERNATIVE DISPUTE RESOLUTION PROVISIONS CONTAINED IN THE DECLARATION, DECLARANT, THE CONTRACTORS, AND THE DESIGN CONSULTANTS WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP, CONSTRUCT, AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS.

(b) Each Party (i) agrees to be bound by the provisions in this Article, (ii) agrees that the provisions of this Article shall be the sole and exclusive remedy that each Party shall have for a Claim, and (iii) covenants not to assert and irrevocably waives any right to trial of any Claim by jury or otherwise in a court of law, which covenant and waiver shall be binding upon its successors and assigns and upon all Persons asserting rights or disputes or otherwise acting on such Owner's behalf. If any Party commences litigation or any other action against any Party in violation of the terms of this Article, the other Party may obtain an appropriate order compelling the Party commencing such litigation or action to comply with the procedures described in this Article, and the Party commencing such litigation or action shall reimburse all costs and expenses, including attorneys' fees and costs, incurred by the other Party in such litigation or action.

19.02 Definitions Applicable to this Article. For purposes of this Article only, the following terms have the meanings set forth in this Section:

(a) “**AAA**” means the American Arbitration Association or any other Person subsequently agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the American Arbitration Association under this Declaration.

(b) “**Alleged Defect**” means an alleged defect with respect to the design, engineering, planning, grading, development, improvement, or construction of the Condominium or the Improvements.

(c) “**Claimant**” means any Party having or asserting a Claim.

(d) “**Claim**” means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Association Documents or the rights, obligations and duties of any Party under any of the Association Documents; (ii) the land development, design, construction and/or alteration of Improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party; (iv) any post-closing dispute under any purchase and sale agreement between Declarant and an Owner; or (v) any limited warranty agreement between Declarant and an Owner. A Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

(e) “**Notice of Claim**” means a notice delivered pursuant to Section 19.08(b).

(f) “**Party**” means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including, without limitation, all Owners; any Contractor or Design Consultant; and any Person not otherwise subject to this Declaration who agrees to submit to this Article.

(g) “**Respondent**” means any Party against whom a Claimant asserts a Claim.

(h) “**Termination of Mediation**” means a period of time expiring forty-five (45) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the Claimant and Respondent are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent), and upon the expiration of which the Claimant and Respondent have not settled the Claim.

19.03 Approval Required for Association Actions. The approval of sixty-seven percent (67%) of the votes attributable to the Units cast by Owners voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, must be obtained before the Association shall have the power to institute action on any Claim or incur legal fees or expert costs in excess of \$5,000.00 related to such Claim pursuant to this Article, or to make any

counterclaim or cross-claim in any lawsuit with respect to any Claim brought against the Association. In addition to the foregoing, the Association shall seek to obtain the approval of sixty-seven percent (67%) of Mortgagees by written vote or proxy by written notice.

19.04 Notice and Quorum for Association Actions. Written notice of any meeting of Members which includes a vote pursuant to Section 19.03 of this Declaration shall be sent to all Owners not less than thirty (30) days nor more than fifty (50) 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 the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

(b) A good-faith estimate of the costs and fees, including court costs and other costs, 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 to be prepared by the primary attorney the Executive Board proposes to have prosecute the Claim on its behalf; and

(c) A good-faith estimate of the manner in which any monies 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 Executive Board proposes to have prosecute the Claim on its behalf; and

(d) A good faith estimate of the projected time frame for resolution of the Claim; and

(e) All terms and provisions of the agreement between the Association and the attorney(s) the Executive Board proposes to have prosecute the Claim;

(f) and, the following disclosures in capital letters and bold typeface:

(i) The alleged construction defects may result in increased costs to the Association in maintenance or repair and/or cause an increase in assessments or special assessments to cover the cost of repairs.

(ii) Until the alleged defects are repaired, sellers of units within the common interest community may owe unit buyers a duty to disclose known defects.

(iii) The Executive Board intends to enter into a fee arrangement with the attorneys representing the association, under which (of the amount the Association recovers from the defendant(s), the attorneys will be paid a contingency fee equal to _____ percent of the (net) (gross) recovery.) (The association's attorneys will be compensated as follows: _____).

(iv) In addition to attorney fees, the association may incur up to \$ _____ for legal expenses, including expert witnesses, depositions, and filing fees. The

amount will not be exceeded without the executive board's further written authority. If the association does not prevail on its claim, the association may be responsible to pay these legal expenses.

(v) If the Association does not prevail on its claim, the Association may be responsible to pay its attorneys' fees.

(vi) If the Association does not prevail on its claim, a court or arbitrator sometimes awards costs and attorneys' fees to the opposing party. Should that happen in this case, the Association will be responsible to pay such award.

(vii) There is no guarantee that the Association will recover enough funds to repair the claimed construction defect(s). If the claimed defects are not repaired, additional damage to property and a reduction in the useful life of the common elements may occur.

(viii) Until the claimed construction defects are repaired, or until the construction defect claim is concluded, the market value of the units in the association may be adversely affected.

(ix) Until the claimed construction defect(s) are repaired, or until the construction defect(s) claim is concluded, owners in the Association may have difficulty refinancing and prospective buyers may have difficulty obtaining financing.

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 the Association wishes to bring.

19.05 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 with respect to any vote approving the Association to bring a Claim:

With full knowledge and understanding that my annual Assessments may be increased by the costs and fees associated with the proposed Claim, I/we APPROVE the authority of the Association to bring such Claim.

19.06 Exclusions from "Claim". Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, "Claim" does not include any of the following, and the same shall not be subject to the provisions of this Article:

(a) Any action to enforce this Declaration pursuant to ARTICLE XVII; and

(b) Any action between or among Owners, which does not include Declarant, a Contractor, a Design Consultant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents.

19.07 Right to Inspect and Repair. In addition to any rights of a Respondent to be heard under Applicable Law, including the Act, prior to any Party commencing any proceeding with respect to a Claim against another Party including, but not limited to, any Claim with respect to an Alleged Defect, the Claimant shall comply with the notice requirements of Section 19.08(b) below, and the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Owners, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect. Within thirty (30) days after the date of the Notice of Claim, a Respondent may elect to inspect the Alleged Defect, at its sole cost and expense. In the exercise of the inspection rights contained herein, the inspecting Party shall:

(i) be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including using its best efforts to avoid causing any damage to, or interference with, any Improvements to the subject property;

(ii) minimize any disruption or inconvenience to any Person who occupies the subject property;

(iii) remove all debris daily that is caused by the inspection and located on the subject property;

(iv) in a reasonable and timely manner, at the sole cost and expense of the inspecting Party, promptly remove all equipment and materials from the subject property and repair and replace all damage, and restore the subject property to the condition of the subject property as of the date of the inspection unless the subject property is to be immediately repaired;

(v) not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the subject property; and

(vi) indemnify, defend, and hold harmless the affected Owners and their Permittees, against any and all liability, claims, demands, losses, costs, and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section.

(b) Within sixty (60) days of completion of the initial inspection or testing, the Respondent may elect to repair some or all of the Alleged Defects by sending a written notice of election to repair to the Claimant. If the Respondent elects to repair some or all of the Alleged Defects, then (i) Respondent has the right to do so and the Claimant may not, directly or indirectly, impair, impede, or prohibit the Respondent from making repairs; and (ii) until after the substantial completion of the repairs (1) the Claimant shall not file or pursue any proceedings under Sections 19.08(c) and 19.08(d) or otherwise, and (2) if the Claimant is an Association, the Claimant shall not undertake the procedures for a consensus vote for Association action set forth in Section 19.03. With any notice of election to repair, Respondent shall provide to Claimant a list of the Alleged Defects that Respondent has elected to repair, a detailed explanation of the repair work to be performed, the reasonably expected completion date for the repairs and an

agreement to compensate Claimant for all applicable expenses, if any, incurred by the Claimant within the time frame set forth for the repair work. The notice shall also include the name of any contractors the Respondent intends to employ for the repairs. Claimant shall promptly cooperate with the Respondent to schedule the repairs and provide reasonable access to the Condominium (including Common Elements and Units) for the repairs.

(c) For purposes of exercising the rights to inspect and repair set forth in this Section 19.07, Declarant reserves for itself, its designees, the Association and its designees, and each Respondent electing to inspect or repair, a perpetual nonexclusive easement of access throughout the Condominium (including Common Elements and Units) to the extent reasonably necessary to exercise such rights by the inspecting and repairing Party.

(d) Within ten (10) days after the receipt of the Respondent's notice of election to repair, the Claimant may deliver to the Respondent a written objection to the proposed repair if the Claimant believes in good faith that the proposed repairs will not remedy the Alleged Defect. The Respondent may elect to modify the proposal, in whole or in part, in accordance with the objection, and proceed with the modified scope of work, or may proceed with the scope of work in the original proposal.

(e) The Respondent shall notify the Claimant when repairs have been completed. The Claimant shall have ten (10) days following the completion date to have the work inspected to verify that the repairs are complete and satisfactorily resolved the Alleged Defect. A Claimant who believes in good faith that the repairs made do not resolve the Alleged Defect may proceed with the formal procedures set forth in Section 19.03 and Sections 19.08(c) and 19.08(d).

(f) With respect to areas of repair work undertaken by the Respondent pursuant to this Section 19.07, the Respondent will conduct daily clean-up and render the work site each night in a safe and orderly condition and, at the completion of the repair work, shall restore the affected areas to substantially the same condition in which they existed prior to the repair, subject to any additional improvements or alterations involved with the repair. The specific materials and workmanship related to the repair work performed by the Respondent shall be warrantied against material defects for a period of one (1) year, which warranty shall be in addition to any express warranties on the original work and shall be subject to the same terms and conditions of the original express warranty, but which repair work shall not be construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104. The Respondent will not permit any lien, claim, or other encumbrance arising from the repair work to accrue against or attach to the subject property, and shall indemnify, defend, and hold harmless the affected Owners and their Permittees against any and all liability, claims, demands, losses, costs, and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section.

(g) Any Alleged Defect discovered after repairs have been completed shall be subject to the same requirements of this Article as if the Respondent did not have notice or an opportunity to repair the new Alleged Defect.

(h) Nothing contained in this Section 19.07 shall obligate any Respondent to perform any such inspection or repair or be deemed to increase a Respondent's legal obligations to any Owner or the Association. A Claimant's written notice delivered to a Respondent, and the associated right of the Respondent to perform an inspection and/or repair, shall be a condition precedent to the right to proceed to any proceedings under Sections 19.08(c) and 19.08(d) or otherwise, and no Claimant shall pursue any remedies available to them pursuant to this Declaration or otherwise, until the Respondent has had the reasonable opportunity to inspect and cure the Alleged Defect. During the term of any written limited warranty provided to the original Owner of a Unit by any Respondent, any conflict between the provisions of this Section 19.07 and the limited warranty shall be resolved in favor of the limited warranty. Except as otherwise provided in the written limited warranty, if any, provided to an Owner, nothing contained herein shall establish any contractual duty or obligation on the part of a Respondent to repair, replace or cure any Alleged Defect. Each Owner's continuing obligation under this covenant shall be binding upon such Owner and its successors and assigns.

(i) It is acknowledged and agreed by all Parties and by any guarantors, insurers, and/or indemnitors of the Parties that any work conducted pursuant to this Section 19.07 (i) is in the nature of corrective or repair work and does not constitute nor shall be asserted or construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104, and (ii) unless part of a written settlement agreement signed by the Claimant and each Respondent, does not constitute nor shall be asserted or construed to be a voluntary payment or assumption of a voluntary obligation without insurer consent under any applicable commercial general liability insurance policy.

(j) THIS RIGHT TO INSPECT AND REPAIR AFFECTS EACH OWNER'S AND THE ASSOCIATION'S LEGAL RIGHTS. OWNERS ARE ADVISED TO READ THIS SECTION CAREFULLY AND TO SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S OR THE ASSOCIATION'S LEGAL RIGHTS.

19.08 Mandatory Procedures.

(a) Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys, independent consultants and professionals to assist such Party in negotiations and to attend meetings.

(b) Notice. At least seventy-five (75) days prior to proceeding with any Claim against a Respondent, each Claimant shall give a Notice of Claim to each Respondent by certified mail, return receipt requested, which notice shall state plainly and concisely:

(i) the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

(ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the specific relief and/or proposed remedy sought.

Notwithstanding the foregoing or any contrary provision herein, the Claimant shall, in addition to complying with the procedures set forth in this Article, follow the alternative dispute resolution procedures set out in the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 et seq., as it may be amended from time to time (“CDARA”) with respect to any Defect Claim, and the initial formal notice required under CDARA may be combined with the formal notice of Claim required by this Section 19.08(b).

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiations within thirty (30) days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA’s Commercial or Construction Industry Mediation Procedures, as appropriate.

(ii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(iv) Each Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all charges rendered by the mediator.

(v) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 19.08(c) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 19.08 of this Declaration. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement including, without limitation, attorneys’ fees and court costs.

(d) Binding Arbitration.

(i) Subject to Section 19.08(c)(ii), upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of JAMS in accordance with the JAMS Commercial or Engineering and Construction Arbitration Rules & Procedures, or, if JAMS is not available, the AAA in accordance with the AAA’s Commercial or Construction Industry Arbitration Rules, as appropriate by one (1) arbitrator. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having competent jurisdiction over

such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one (1) arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved who shall be selected as follows: each party shall select one (1) arbitrator and such selected arbitrators shall select a single third arbitrator who shall decide the Claim. Notwithstanding the foregoing, if the claimed amount exceeds Two-Hundred Fifty Thousand Dollars (\$250,000.00) or includes a demand for punitive damages, the dispute shall be heard and determined by three (3) arbitrators who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved, who shall be selected as follows: each party shall select one (1) arbitrator and such selected arbitrators shall select a single third arbitrator.

(ii) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial and on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

(iii) The award of the arbitrator shall be accompanied by detailed written findings of fact, conclusions of law, and the relief granted, and be rendered promptly after the close of the hearing but in no event later than thirty (30) days from the close of the hearing, unless otherwise agreed by the Parties. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties to the Claim.

(iv) The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado.

(v) The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with Applicable Law and judgment obtained thereon, and execution may issue. If any Party objects to entry of judgment upon any arbitration award entered pursuant to this Section 19.08(d), the Party that substantially prevails in any ensuing dispute concerning the entry of judgment upon such award shall be entitled to all attorneys' fees and costs incurred in the enforcement of the award.

19.09 Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the Act or omission was not willful, wanton or grossly negligent.

19.10 Waiver of Consequential, Punitive and Other Damages.

(a) Notwithstanding anything to the contrary set forth in this Declaration, no Respondent shall be liable to any Claimant for any consequential, incidental, special, treble, punitive, or indirect damages (including, but not limited to, lost profits) or diminution in value of

any Unit arising from, relating to, or otherwise in connection with any Claim even if such Respondent has been advised of the possibility of or could have foreseen such damages. This waiver applies regardless of the form of action, whether in contract, tort, or otherwise.

(b) In addition to any other limitations established by Applicable Law or this Declaration, no Respondent shall be liable to any Claimant for any Claim relating to or arising from an Alleged Defect except to the extent that the Respondent's design, engineering, planning, grading, development, improvement, or construction of the Condominium or the Improvements deviates to a material degree from the standard in the industry prevailing with respect to projects of comparable price and quality in the City at the time a building permit was issued for the portion of the Condominium to which the Claim relates. No Respondent shall be liable for any damage, defect, or cost in respect of any Claim which results from (i) ordinary wear and tear, or (ii) the failure of the Claimant to repair, maintain, or periodically service any component of the Community as required pursuant to Section 9.05, or otherwise in a reasonably prudent manner. The provisions of this Section 19.10 are intended to limit liability of any Respondent in respect to any Claim related to or arising from an Alleged Defect and nothing contained herein shall be construed so as to expand any of their liability under Applicable Law, and any other limitations of liability applicable under Applicable Law shall apply.

(c) If any defect is attributable in part to the failure by a Respondent, to design, engineer, plan, grade, develop, improve, or construct the Project in accordance with the industry standard set forth in Section 19.10(b), and in part to any circumstances described in clauses (i) or (ii) in Section 19.10(b) and/or to the acts or omissions of persons not under the control of such Respondent, and/or to any acts, omissions, or events for which such Respondent is not liable, then principles of comparative negligence will apply, and such Respondent shall be liable to the Claimant only to the degree of such parties' fault. In no event will any Respondent's liability in regard to any Claim related to or arising from an Alleged Defect exceed its share (based on comparative negligence principles described above) of (i) costs reasonably necessary to correct or repair the conditions to which the Claim relates, and (ii) costs reasonably incurred to pursue the Claim.

19.11 No Amendment; Standing to Enforce. Notwithstanding anything to the contrary set forth in this Declaration or any of the Association Documents, the provisions of this ARTICLE XIX inure to the benefit of Declarant, are enforceable by Declarant, and SHALL NOT EVER BE AMENDED OR NULLIFIED WITHOUT THE WRITTEN CONSENT OF DECLARANT, in its sole, absolute and arbitrary discretion and without regard to whether Declarant owns any portion of the Condominium at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE XIX ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. Any amendment made without the requisite written consent of Declarant shall be null and void and shall have no effect. Further, all Contractors and Design Consultants are third-party beneficiaries of this Article and of the terms and conditions contained herein, including without limitation the requirement for binding

arbitration, and each Contractor and Design Consultant has standing to enforce the terms and conditions of this Article, including without limitation to compel binding arbitration.

19.12 Reformation. The Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that an essential part of the Declaration is this Article and its agreement between and among the Parties to provide for the submission of all Claims to informal negotiation and correction efforts, mediation, and final and binding arbitration. Therefore, if any court or arbitrator concludes that any provision of the procedures set forth in this Article is void, voidable, or otherwise unenforceable, the Parties understand and agree that the court or arbitrator shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the Parties' express desire that the merits of all Claims be resolved only by negotiation, mediation, and arbitration and, to the greatest extent permitted by law, in accordance with the principles, limitations, and procedures set forth in the procedures in this Article.

ARTICLE XX DISCLAIMERS AND DISCLOSURES; OWNER ACKNOWLEDGMENTS

20.01 Urban Environment. The Condominium is benefited by its urban location. Owner acknowledges that such location may entail certain unpredictable impacts to the Owners generated thereby, including, without limitation, traffic congestion, lights, noise and odors, crime, panhandling and other aspects of urban life.

20.02 No View Easement. Notwithstanding anything to the contrary contained in this Declaration or any other Association Document, or any representation made to the contrary by any real estate agency or any agent, employee or representative of Declarant or the Association, Declarant makes no warranties or representations whatsoever as to, and by taking title to a Unit each Owner is deemed to have agreed and accepted that there is no, easement or other right, express or implied, for the benefit of an Owner or the Association for light, view or air included in or created by this Declaration or as a result of an Owner owning a Unit, and that the view, light and air existing may be changed or eliminated by future events, which may include development of adjacent properties by Declarant or its affiliates, or other Persons. EACH OWNER, BY VIRTUE OF OWNERSHIP OF ITS UNIT, HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, OBLIGATIONS OR LIABILITIES CONCERNING EASEMENTS OR OTHER RIGHTS, WHETHER EXPRESS OR IMPLIED, FOR LIGHT, AIR, OR VIEW IN SUCH OWNER'S UNIT AND/OR THE CONDOMINIUM AND AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT, ITS AFFILIATES, CONTRACTORS AND AGENTS RELATED TO, ANY LOSS OF LIGHT, AIR, OR VIEW THAT MAY AFFECT THE UNIT OR THE PROJECT.

20.03 Sound Transmission and Light Disclaimer; Release. EACH OWNER, BY VIRTUE OF OWNERSHIP OF ITS UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A MULTI-STORY BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY RESIDENCES, FROM THE COMMON

ELEMENTS (INCLUDING HALLWAYS AND TERRACES) AND FROM THE COMMERCIAL UNITS AND THEIR ATTENDANT FACILITIES, THE CONDOMINIUM PARKING GARAGE, AND THE SURROUNDING DEVELOPMENT AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS. NEITHER THE DECLARANT NOR THE OWNERS OF THE COMMERCIAL UNITS MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM OR THE LEVEL OF LIGHT THAT MAY IMPACT A UNIT, EACH AS MORE FULLY DISCUSSED BELOW. EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION OR LIGHT IMPACTS UPON THE UNITS. In connection therewith, Owners hereby acknowledge that living in a multi-story building and/or living in close proximity to commercial property entails living very close to other persons, businesses and operations with attendant limitations on solitude and privacy. Walls, floors and ceilings have been designed to meet applicable building codes. However, in a multi-story building, Owners and occupants will hear noise from adjacent units and from common areas, utilities and equipment, including but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items as commercial activities, indoor and outdoor activities that may be held by the Owners of Commercial Units or other property adjacent to the Condominium, vacuum cleaners, stereos, televisions, or people running, walking, exercising and socializing. Owners can expect to experience substantial levels of sound, music, noise, odors, vibrations and other nuisances from other Units and areas within the Condominium and from other developments in the vicinity of the Condominium. Owners may also experience light entering a Unit from commercial lighting, LED signs and displays, and other activity in the vicinity of and from street lights located in close proximity to the windows and doors of the Units. The Owners of Commercial Units may also host special events and redirect traffic as well as ingress and egress into the Units during such events.

20.04 Safety and Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to promote or enhance the safety and security of Owners, their Permittees and other occupants of the Units. No representation or warranty is made by Declarant or the Association that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Condominium, cannot be compromised or circumvented or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and agrees, and shall be responsible for informing Permittees and all other occupants of its Unit that the Association, the Executive Board, and Declarant are not insurers or guarantors of security or safety and that each Person within the Condominium assumes all risks of personal injury and loss or damage to property.

20.05 Garage; Parking. Owner understands and agrees that the structure of the Condominium Parking Garage includes columns, lighting, mechanical equipment, and other obstructions that may adversely affect the use and enjoyment of parking spaces. Owner agrees that the foregoing are acceptable conditions and no person, including the Association and any

other Owner, shall have any liability or responsibility for any damage to vehicles arising in connection with such conditions.

20.06 Amenities. No interest in or right to use any amenity located outside of the Condominium, such as spas, health club facilities or the like, shall be conveyed to an Owner pursuant to this Declaration. The owners of nearby facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of the Condominium.

20.07 Condensation/Humidity. The exterior window (and door) system is designed to mitigate the migration of cold from the outside environment to the interior of the Unit. In very cold conditions or in relatively high humidity within the Unit, condensation, frost, and ice may form on the windows, doors, or frames thereof, which moisture can cause various problems including damage to flooring, walls, and other property in contact with the moisture. Owner acknowledges and agrees that it is Owner's responsibility to maintain the humidity and temperature within the Unit within levels specified within the Maintenance Recommendations and so as to avoid the formation of condensation on the windows, including limiting the use of humidifiers and operating exhaust fans during and after cooking and bathing/showering.

20.08 Mold. Fungi, mold, toxic mold, mycotoxins, microbial volatile, dust mites, mildew, organic compounds and other micro-organisms (collectively, "**Mold**") naturally occur in soil, water, plants and air. Mold may be present in varying quantities within any indoor environment, including the Units and other portions of the Condominium, and may be present on the materials used in the Units. Mold is a known allergen which can cause respiratory problems in some people and aggravate asthma symptoms. According to the EPA, other health effects may be linked to toxic mold, including immune system suppression, acute or chronic liver or central nervous system damage, endocrine effects, and cancer, based on case reports and occupational studies. Each Owner is hereby advised that the Declarant is not qualified and has not undertaken to evaluate all aspects of this issue and that the Declarant has made no representation or warranty, express or implied, concerning the presence or absence of Mold in the Units, or the Condominium. There is no practical way to eliminate all Mold from an indoor environment, but excessive Mold growth can be controlled by controlling moisture. When there is excessive moisture or water indoors, Mold growth can and will occur, particularly if the condition is not addressed. Each Owner understands that the Owner is in a superior position to prevent Mold growth within the Unit. As such, each Owner agrees to maintain its Unit, including any Limited Common Elements allocated to the Unit, in such manner as to reduce the potential for Mold growth, including without limitation preventing and promptly repairing plumbing leaks, keeping dryer vents and fans clear and functioning, and controlling the humidity in the Unit to prevent condensation on windows and other surfaces. Each Owner agrees to perform periodic inspections of its Unit, including any Limited Common Elements allocated to the Unit, for the presence of Mold or conditions which may increase the likelihood of Mold growth and to monitor continually such areas for excessive moisture or water. If an Owner discovers excessive moisture or water within its Unit, or any Limited Common Elements allocated to its Unit, the Owner agrees to take necessary steps to immediately eliminate the source of water or moisture, recognizing that failing to do so can result in damage and Mold growth. Each Owner acknowledges that the Association and other Owners are relying on Owner

to perform the foregoing services in order to assure that the Unit and the Condominium as a whole function in the manner designed. Owner agrees to be fully and solely responsible for any liability or damage resulting from Owner's failure to perform as agreed in this Section 20.08.

20.09 Signage. Each Owner acknowledges that Declarant may, or may permit third parties to, utilize and have access to portions of the exterior of the Condominium building for the purpose of erecting, constructing, installing, placing, operating, maintaining, servicing, relocating and removing advertising sign(s). Owner will not (i) receive any compensation in connection therewith or (ii) be entitled to participate in decisions regarding the contents of any advertising signs or materials installed on the Condominium building. Construction Activities. The Community is located in an area that may be subject to or near ongoing construction activities (collectively, the "**Construction Activities**"). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (a) construction traffic; and (b) construction activities (including, without limitation, grading, excavation, clearing, site work, relocation of roadways and public utilities and construction of improvements) relating to the Condominium or nearby properties. Each Owner acknowledges that Construction Activities may disturb the Condominium and their use and occupancy of any portion of the Condominium, and waives any and all rights or causes of action against Declarant, its affiliates, the Association, and their respective employees, agents and contractors in connection with the Construction Activities or due to the existence, occurrence, or the temporary or permanent interruption, discontinuance or modification of the Construction Activities.

20.11 Mountain Activities. The Property is located adjacent to or in the vicinity of skiing facilities and other all-season recreational areas (the "**Mountain Recreational Areas**"). The Mountain Recreational Areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance of the Mountain Recreational Areas (the "**Mountain Activities**"). The Mountain Activities may include, without limitation: (a) movement and operation of passenger vehicles (including, without limitation, buses, vans and other vehicles transporting passengers over adjacent streets and over, around and through the Mountain Recreational Areas), commercial vehicles and construction vehicles and equipment; (b) activities relating to the construction, operation and maintenance of roads, trails, ski trails, skiways and other facilities relating to the Mountain Recreational Areas (including, without limitation, tree cutting and clearing, grading and earth moving and other construction activities, construction, operation and maintenance of access roads, snow-making equipment, chairlifts, gondolas, buses or other transportation systems, operation of vehicles and equipment relating to trash removal, snow removal, snow grooming, and over-the-snow or over-the-terrain transportation purposes, and operation of safety and supervision vehicles); (c) activities relating to the use of the Mountain Recreational Areas (including, without limitation, skiing, snow-boarding, ski-patrol activities, and other over-the-snow activities, hiking, horseback riding, alpine slide, bicycling and other recreational activities); (d) ski racing and organized events and competitions relating to the activities described in clause (c) above; (e) concerts, festivals, art and other shows and displays, fireworks displays, outdoor markets and other performances and special events; (f) lodging cabins, restaurants, clubs, restrooms and other public use facilities; (g) public access to adjacent U.S. Forest Service lands; (h) public parking facilities and the traffic related thereto; and (i) other activities permitted by law. The Mountain Activities may occur during daytime and nighttime

and may be temporarily or permanently interrupted, discontinued or modified, in whole or in part, from time to time. EACH OWNER, BY VIRTUE OF OWNERSHIP OF ITS UNIT, AGREES THAT DECLARANT, AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT AND ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM DISTURBANCE OF THE PROPERTY IN CONNECTION WITH MOUNTAIN ACTIVITIES OR DUE TO THE EXISTENCE, OCCURRENCE, OR THE TEMPORARY OR PERMANENT INTERRUPTION, DISCONTINUANCE OR MODIFICATION OF THE MOUNTAIN ACTIVITIES OR THE RECONFIGURATION OF THE MOUNTAIN RECREATIONAL AREAS.

20.12 Commercial Activities. A variety of commercial activities (the “**Commercial Activities**”) are and may be conducted nearby and adjacent to the Property (the “**Commercial Activity Areas**”). The Commercial Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include, without limitation: (a) operation of full-service hotel(s) and/or timeshare, vacation club or similar facilities which may include health spa(s) with associated swimming pool(s) and other indoor or outdoor recreational facilities; (b) meetings, conferences, banquets and other group events; (c) sales and rentals of clothing, skis, ski-related equipment, other over-the-snow equipment, bicycles, and other recreational equipment; (d) sales of tickets for chairlifts, gondolas, other transportation systems, and other activities and events conducted on the Mountain Recreational Areas; (e) indoor and outdoor restaurant and bar operations (including, without limitation, the sale of food and alcoholic and non-alcoholic beverages for on-site and off-site consumption) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities on and immediately adjacent to the Property; (f) sales of services relating to skiing, other over-the-snow activities, and other recreational activities (including, without limitation, tuning, waxing, repairing, mounting of bindings on, renting, storing and transporting skis, snowboards and similar equipment, ski schools and other forms of individual and group lessons, tours and excursions); (g) public use of the adjacent properties for access to the Mountain Recreational Areas, vehicle passenger drop-off and pick-up, locker room, changing room, rest room and lounge purposes in designated areas, and short-term clothing and equipment storage; (h) parking activities (including, without limitation, activities relating to valet parking or parking relating to adjacent properties); (i) the installation, operation and maintenance of illuminated and non-illuminated signage; (j) concerts and other outdoor and indoor entertainment, performances and special events, which may include amplified live or recorded music; and (l) any other uses or activities permitted by law. EACH OWNER, BY VIRTUE OF OWNERSHIP OF ITS UNIT, AGREES THAT DECLARANT AND ITS AFFILIATES WILL NOT HAVE ANY OBLIGATION OR LIABILITY FOR, AND WAIVES ANY CLAIM AGAINST DECLARANT AND ITS AFFILIATES, AND THEIR CONTRACTORS OR AGENTS, ARISING FROM DISTURBANCE OF THE PROPERTY IN CONNECTION WITH COMMERCIAL ACTIVITIES OR DUE TO THE EXISTENCE, OCCURRENCE, OR THE TEMPORARY OR PERMANENT INTERRUPTION, DISCONTINUANCE OR MODIFICATION OF THE COMMERCIAL ACTIVITIES OR THE RECONFIGURATION OF THE COMMERCIAL ACTIVITY AREAS.

20.13 Other Properties. Each Owner acknowledges that other properties are located adjacent to and in the general vicinity of the Condominium (the “**Other Properties**”) and that the Other Properties may be developed pursuant to the land uses permitted by the City’s zoning ordinances, as well as any other governmental rules, regulations, or policies in effect now or in the future which are applicable to the Other Properties (collectively, the “**Ordinances**”). Neither Declarant, nor any of its employees, agents, officers, directors and Affiliates make any representations concerning the current or future uses of the Other Properties. Each Owner further acknowledges that the zoning for the Condominium and the Other Properties is established and governed by the Ordinances. Any amendment of those Ordinances requires approval of the City. Each Owner acknowledges that it has not relied upon any statements or representations regarding the Condominium or the Other Properties, including, without limitation, any representations made by Declarant, or its agents or employees or any real estate agency or any agent, except for those statements and representations expressly set forth in this Declaration and the Ordinances.

ARTICLE XXI MISCELLANEOUS

21.01 Interpretation of the Declaration. Subject to the provisions of ARTICLE XIX, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

21.02 Severability. Any determination that any provision of this Declaration is in conflict with the requirements of Applicable Law shall not be deemed to invalidate such provision as a whole but shall be adjusted as necessary to comply with Applicable Law. Any determination that any provision of this Declaration is invalid as a whole or unenforceable shall not affect the validity and enforceability of any other provision hereof.

21.03 Disclaimer of Representations. Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Condominium can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, regardless of whether it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is at any time used for a particular use, that such use will continue in effect.

21.04 Reference to Declaration. Instruments affecting any Unit or any other part of the Condominium may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any such instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any such instrument and his heirs, executors, administrators, successors and assigns.

21.05 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant’s rights and powers hereunder on the condition that Declarant’s rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

21.06 Captions and Titles. All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

21.07 Exhibits. All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

21.08 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of law provisions thereof.

21.09 Notices. All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to such address. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Attention: _____

21.10 Waivers. No waivers by the Association of any right of the Association shall constitute a waiver by Declarant of any right of Declarant.

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B
ADDITIONAL PROPERTY

EXHIBIT D

INSURANCE REQUIREMENTS

(a) Insurance Requirements for Unit Owners at all times. It shall be the responsibility of each Owner to obtain and maintain, or cause to be obtained and maintained, at all times and at such Owner's sole cost and expense, the property, liability and other additional insurance coverages as required in this section. Such insurance may be supplemented by insurance which is greater in coverage or scope than that which is required hereunder, as determined by each Owner from time to time. No insurance coverage obtained by any Owner shall operate to decrease the amount which the Association, on behalf of all Owners, may realize under any policy required to be maintained by the Association hereunder, or otherwise terminate, cause the diminution of, or otherwise adversely impact any required insurance coverage obtained by the Association. Any insurance obtained by an Owner shall include a waiver of subrogation against the Association and other Owners, unless the losses and damages sustained or incurred are the result of or arise from the gross negligence or willful misconduct of the Association or other Owners, as the case may be.

(i) Property Insurance. "All-Risk" property insurance coverage for the full replacement value, without reduction for depreciation, for the finished interior surfaces of the walls, floors and ceilings of a Unit, and the interior improvements, finishes, fixtures or other betterments within a Unit, excluding that portion of the Unit constituting Association Insured Property (collectively, the "**Interior Improvements**"). Such insurance shall include, but not be limited to, coverage for terrorism, earthquake, flood, windstorm and hail, and mechanical/electrical breakdown. The Association shall not be responsible for providing insurance coverage for the Interior Improvements or personal property of any Owner. Neither the Association nor any other Owner shall be required to be named as an insured on any policy described in this item (a)(i), and each Owner may adjust, settle and collect proceeds thereunder without the consent or participation of the Association or any other Owner or any obligation to pay the same over to the Association.

(ii) Liability Insurance Coverage. Commercial general liability insurance covering bodily injury and property damage, including contractual liability, personal injury, advertising injury and products/completed operations coverage, written on an "occurrence form" or equivalent liability coverage, insuring against any liability arising out of or incident to the ownership, operation, maintenance, use and control of each Owner's respective Unit and any Limited Common Elements allocated to such Unit in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in annual aggregate. Any First Mortgagees, the Association, any managing agent, and any other persons as the applicable Unit Owner wishes to name shall be named as additional insureds on such policy as their respective interests may appear. The foregoing shall be in addition to any insurance obligations the Owners may have to their Mortgagees, if any, with respect to liability insurance. Limits of insurance may be maintained through a combination of primary and umbrella/excess liability insurance. Umbrella/excess policies must follow the form of the underlying policies. Owners of Commercial Units shall also maintain, to the extent applicable, innkeeper's liability coverage, liquor liability insurance, garage liability insurance, and garagekeeper's insurance, with such form and with such limits of coverage as are then generally being maintained by owners or operators of facilities of equivalent class in the State of Colorado.

(iii) Umbrella Liability. Owners of Commercial Units shall maintain umbrella liability coverage in the amount of not less than **Twenty Million Dollars (\$20,000,000.00)** per occurrence and in annual aggregate.

(iv) Automobile Liability. Owners of Commercial Units shall maintain automobile liability coverage for bodily injury and property damage covering all owned, non-owned and hired vehicles in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit.

(v) Worker's Compensation. Owners of Commercial Units shall maintain worker's compensation coverage as required by law, covering employees, volunteers, temporary workers, and leased workers, and employers liability coverage with a limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident, One Million Dollars (\$1,000,000) each employee for bodily injury by disease, and One Million Dollars (\$1,000,000) disease policy limit. To the extent any employees conduct work in other states, each workers compensation insurance policy shall be endorsed to provide coverage should such employees elect benefits from such other states.

(b) Insurance Requirements for Association at all times.

(i) The Association shall obtain and maintain the following insurance coverages at all times:

(1) Property Insurance. "All-Risk" property insurance coverage for the full replacement value, without reduction for depreciation, of the Association Insured Property. Such insurance shall include, but not be limited to, coverage for terrorism, windstorm and hail, and mechanical/electrical breakdown. Such property insurance coverage may have a maximum deductible of One Hundred Thousand Dollars (\$100,000.00)(except up to five percent (5%) of total insured values for catastrophic perils) unless a higher deductible applicable to the Association Insured Property has been approved by the Executive Board. Each of the Owners, First Mortgagees and the Association shall be named as an insured. If available at commercially reasonable rates, the Association shall procure earthquake and flood insurance for the Association Insured Property. If the Association Insured Property is located within an area designated as "Flood prone" or a "Special Flood Hazard Area" (as defined under the regulations adopted under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), flood insurance, to the extent available at commercially reasonable rates, shall be provided in an amount equal to the maximum limit of coverage available under the National Flood Insurance Program.

(2) Liability Insurance Coverage. Commercial general liability insurance covering bodily injury and property damage, including contractual liability, personal injury, advertising injury and products/completed operations coverage, written on an "occurrence form" or equivalent liability coverage, insuring against bodily injury and property damage arising out of or incident to the ownership, operation, maintenance, use and control of the Common Elements in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in annual aggregate. The Owners, First Mortgagees, the Association, any managing agent, and any other persons as the Association wishes to name shall be named as additional insureds on such policy as their respective interests may appear. The form, coverage and limits shall conform to and be consistent with the form, coverage and limits of insurance carried by the owners of similar projects in the City with similar uses, Total Area of all Units and, as applicable, rent per square foot. The foregoing shall be in addition to any insurance obligations the Owners may have to their Mortgagees, if any, with respect to liability insurance. Limits of insurance may be maintained through a combination of primary and umbrella/excess liability insurance. Umbrella/excess policies must follow the form of the underlying policies.

(3) Umbrella Liability. Umbrella liability coverage in such amount as may be determined from time to time by the Executive Board.

(4) Automobile Liability. Automobile Liability for bodily injury and property damage covering all owned, non-owned and hired vehicles in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit.

(5) Crime. Crime insurance coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), including blanket employee dishonesty, employee theft of client property, forgery or alteration and computer fraud and funds transfer fraud, insuring funds held by or on behalf of the Association and covering the Association, the Executive Board, the officers of the Association, any managing agent, any party from whom the Association is collecting dues, and their respective employees, contractors and agents.

(6) Worker's Compensation. If the Association has employees, Worker's Compensation coverage as required by law, covering employees, volunteers, temporary workers, and leased workers, and employers liability coverage with a limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident, One Million Dollars (\$1,000,000) each employee for bodily injury by disease, and One Million Dollars (\$1,000,000) disease policy limit. To the extent any employees conduct work in other states, each workers compensation insurance policy shall be endorsed to provide coverage should such employees elect benefits from such other states.

(7) D&O. A policy of Directors and Officers Insurance in the amount of at least Two Million Dollars (\$2,000,000.00) to indemnify: (a) the Association for any obligations which it incurs as a result of the indemnification of Directors and Officers of the Association as required by law or by court order; (b) Directors and Officers of the Association in instances which they may be indemnified by the Association under provisions of the Bylaws; and (c) Directors and Officers of the Association in instances which they may not otherwise be indemnified, to the extent provided by such insurance.

(8) Terrorism. If no longer available as part of "All-Risk" property policy coverage, insurance covering losses resulting from acts of terrorism to the extent such losses are then generally covered in insurance policies obtained by owners of similar projects in the City with similar uses, Total Floor Area and, as applicable, rent per square foot. Such coverage shall be in the amount indicated in item (b)(i)(1) above.

To the extent not specified above, all such insurance shall be in such amounts as the Association shall from time to time determine to be reasonable, subject to the obligation to obtain an appraisal in accordance with item (b)(iv) below, the appraised value of which shall be the minimum value used in determining replacement value. The foregoing shall be in addition to any insurance obligations the Association may have to any Mortgagees of the Units.

(vi) Procedures for Settlement of Claims. All property policies described in item (b)(i) above shall provide that approval and settlement of any claim of loss shall be made by the Association.

(vii) "Agreed Amount" Endorsement; Insured's Appraisal Requirement.

(1) All policies of property insurance shall contain a co-insurance waiver or an "Agreed Amount" endorsement.

(2) The Association shall obtain an appraisal of the full insurance replacement value of the Association Insured Property, without deduction for depreciation, for the purpose of determining the amount of property insurance to be obtained pursuant to item (b)(i)(1) above. Such an appraisal shall be obtained upon substantial completion of the Association Insured Property and thereafter not less than every five (5) years (or more often, if deemed appropriate by the Association).

(c) Insurance Requirements to Cover Reconstruction Work Performed by or for the Association.

(i) In connection with any reconstruction work performed by the Association, if not already covered by insurance policies then maintained by the Association, the Association shall also obtain and maintain “All Risk” builder’s risk on a completed value basis, including earthquake, flood, windstorm and hail, ordinance and law, off premises power failure, soft costs and mechanical/electrical breakdown property insurance coverage, including damage to existing structures (with commercially reasonable sublimits, as applicable) in an amount equal to the cost of the contract for any work performed by the Association. Alternatively, the Association may cause its contractors to maintain equivalent insurance, naming the Association and all Owners as additional named insureds. Such insurance:

a. shall not contain an occupancy exclusion; and

b. if any offsite storage location listed with such insurer is used, shall cover, for full insurable value, all materials and equipment which have been delivered to and are stored at any such offsite storage location and which are intended for use with respect to the Association Insured Property.

(d) Insurance Required of Contractors During Repair or Reconstruction Work. Any contractor hired by or on behalf of an Owner or the Association to perform construction at the Condominium shall maintain the following:

(i) Liability Insurance. A policy of commercial general liability insurance covering bodily injury and property damage, including contractual liability, personal injury, advertising injury and products/completed operations coverage, written on an “occurrence form,” insuring against any liability arising out of or incident to repair or reconstruction work on any Unit or Limited Common Element allocated to that Unit (to the extent due to the acts or omissions of such Owner or its Permittees) in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in annual aggregate. The Owner, First Mortgagee of the applicable Unit, Association, any managing agent, and any other persons an Owner wishes to name shall be named as additional insureds on such policy as their respective interests may appear. The form, coverage and limits shall conform to and be consistent with industry practice. Limits of insurance may be maintained through a combination of primary and umbrella/excess liability insurance. Umbrella/excess policies must follow the form of the underlying policies. The foregoing shall be in addition to any insurance obligations the Owners have to their Mortgagees, if any, with respect to liability insurance.

(ii) Umbrella Liability. Umbrella liability coverage in the amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence and in annual aggregate.

(iii) Workers’ Compensation/Employers Liability Insurance. During construction, Workers’ Compensation coverage as required by law, covering employees, volunteers, temporary workers, and leased workers, and employers liability coverage with a limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident, One Million Dollars (\$1,000,000) each employee for bodily injury by disease, and One Million Dollars (\$1,000,000) disease policy limit. To the extent any employees conduct work in other states, each workers compensation insurance policy shall be endorsed to provide coverage should such employees elect benefits from such other states.

(iv) Automobile Liability. To the extent any Owner owns or operates a vehicle in connection with ownership or operation of its Unit during construction, automobile liability insurance for bodily injury and property damage covering all owned, non-owned and hired vehicles in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit.

(v) Contractor's Professional Liability. Contractor's professional liability in a minimum amount of Two Million Dollars (\$2,000,000.00) covering third party claims for bodily injury and/or property damage stemming from design liability.

(e) General Insurance Matters.

(i) Insurer Requirements. The property and liability policies of insurance obtained by the Association shall be from companies licensed or authorized to do business in the State of Colorado. The property and liability policies of insurance required to be obtained by any Person pursuant to this Exhibit D shall be from companies rated in the A.M. Best Key Rating Guide (or any successor publication of comparable standing) with a rating of at least A -/VII (or the then equivalent of such rating). During the term of this Declaration, the Association and each Owner acknowledges that the scope of coverages, or the nomenclature by which such coverages are known, may change. In such event, the Association and each Owner shall be obligated to maintain the scope of coverage contemplated as of the initial filing of this Declaration, to the extent reasonably practicable, regardless of the nomenclature by which the scope of such coverages may be subsequently known from time to time.

(ii) Insurance Not Available at Commercially Reasonable Premiums. All of the policy requirements (including any required coverage or endorsements) contained in this Exhibit D are required only to the extent obtainable at commercially reasonable rates and on commercially reasonable terms from any insurance company meeting the requirements set forth herein. For purposes of the foregoing, rates and terms shall be considered commercially reasonable (notwithstanding the actual amount thereof) if: (a) the Mortgagee of a Unit requires such coverage; or (b) other buildings in the City with similar uses are then: (i) generally obtaining insurance which meets the insurance requirements in question; and (ii) the premiums for such policies are not substantially lower on a comparative basis to those which the Association or an Owner, as applicable, would be required to pay to obtain such insurance. If an Owner or the Association claims that such insurance is not obtainable at commercially reasonable rates or on commercially reasonable terms pursuant to the foregoing sentence, the Owner or Association shall: (x) provide the Association and the other Owners with immediate written notice of same; and (y) obtain such coverages in lieu and in place of those required hereunder as approved by: (I) the Association, if an Owner provides the notice required in clause (x); or (II) all the Owners, if the Association provides such notice.

(iii) Notice of Cancellation. Before any cancellation of a policy or any change that would result in a violation of the requirements set forth in this Exhibit D, at least thirty (30) days' advance written notice shall be given, if and to the extent any insurer agrees to provide such notice to the Owners and the Association.

(iv) Required Waivers.

(1) All policies of property insurance shall to the extent obtainable, contain:

a. waivers by the applicable insurer of all rights of subrogation against the Association, each Owner, any managing agent, if any, and any Permittees (including persons leasing, licensing, subleasing or having the right to use space in the Units or Common Elements) and each of their respective agents, employees and licensees, and an agreement that each such policy shall not be invalidated if the insured waives or has waived its right of recovery against any such persons prior to a loss; and

- b. waivers of any defense based on:
 - i. co-insurance,
 - ii. other insurance, and
 - iii. invalidity arising from any acts of the insured.

(2) Each Owner shall cause any tenant or subtenant of space in its Unit to obtain reasonable and customary insurance that is carried by owners of similar projects located in the City with similar uses, Total Area of all Units and, as applicable, rent per square foot such as commercial general liability, worker's compensation, property or casualty insurance policy insuring fixtures, machinery and equipment and any other personal property in such tenant's or subtenant's premises containing a waiver by the applicable insurer of all rights of against the Association, any Owner, any other Permittees and their employees or agents and an agreement that such policy shall not be invalidated if the insured waives or has waived its right of recovery against any such persons prior to a loss.

(3) Insofar as may be permitted by Applicable Law, the Association, each Owner and each Permittee hereby waives for itself, and those claiming through and under such party, any claim or right of recovery and releases the Association, the Owners and each Permittee and their respective agents and employees (collectively, the "**Waiver Parties**") with respect to any property damage claim which it (or those claiming through or under it) might otherwise have against any of the other Waiver Parties for loss, damage or destruction (including rental value or business interest, as the case may be), except those arising from the gross negligence or willful misconduct of the Waiver Party, to the extent such loss, damage or destruction is actually covered under, and such proceeds are received by way of a claim against, the property insurance policies maintained by or on behalf of such waiving party (or with respect to an Owner's claims relating to loss, damage or destruction to the Common Elements, by or on behalf of the Association).

(v) Additional Liability Insurance Requirements.

(1) Liability coverage shall be endorsed with a Cross Liability or Separation of Insured endorsement, if not otherwise included, providing that if a claim is brought by one insured against another insured under such policy, or by an employee of one insured against another insured under such policy, each insured shall be considered a separate insured for purposes of the insurance.

(2) Liability policies shall be written with a contractual liability endorsement, if not otherwise included, providing coverage for bodily injury or property damage assumed under any type of written contract, except any contract under which the insured assumes liability for the sole negligence of an indemnitee.

(vi) Copies of Policies; Certificates.

(1) Association Insurance.

a. A copy of each policy required to be maintained by the Association pursuant to this Exhibit D, certified by the insurer to be a true copy thereof, shall be kept on file by the Association, except that if any insurance carried by the Association is effected by one or more blanket policies, then with respect to such insurance, certified abstracted policies may be kept.

b. Upon request of an Owner, the Association shall deliver to each Owner a certified copy of the policies maintained by the Association, or renewal or replacement insurance policy replacing an expiring policy, or a certificate (in form then customarily required by institutional lenders making loans on comparable projects (based on age, size and quality) or in other form as is reasonably satisfactory) or other evidence reasonably satisfactory to the recipient of the existence of such renewal or replacement policy, together with proof of payment of premiums and confirmation that such policy meets the requirements of this Exhibit D.

(2) Certificate(s) evidencing the existence of coverage to be maintained by an Owner under this Exhibit D shall be delivered to the Association upon request. The Association shall make such certificates available for review by the other Owners upon written request.

(3) Any certificate of insurance described in this section shall contain a provision stating that the insurer or its authorized representative(s) shall endeavor to provide thirty (30) days' prior written notice of intent to non-renew, cancellation to the applicable certificate holder, except that ten (10) days' notice for non-payment of premium shall apply.

(vii) Owner Liability. Neither the issuance of any insurance policy hereunder, nor the minimum limits specified herein with respect to an Owner's insurance coverage, shall be deemed to limit or restrict in any way any Owner's liability in connection with or arising out of its work and the indemnification obligations set forth in this Declaration. In the event an Owner fails to procure and maintain any insurance required to be procured and maintained by the Owner hereunder, and an uninsured loss occurs that would have otherwise been covered under the insurance required to be procured and maintained by the Owner hereunder, such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association. In addition, in the event an Owner fails within thirty (30) days after notice from the Association to procure and maintain any insurance required to be procured and maintained by the Owner hereunder, the Association may (but shall have no obligation to) procure and pay for such insurance and charge such Owner responsible as a Default Assessment.

(viii) Schedule of Insureds. The Association shall maintain a schedule of all required additional insureds for each type of insurance required hereunder and shall update such schedule periodically upon any applicable change. The Association shall provide copies of such schedule to all Owners upon any such change and at any time upon request.

(ix) Blanket Policy Option.

(1) Any policies required to be maintained by the Association pursuant to Exhibit D hereof may be maintained by or on behalf of the Association under a blanket policy or coverages (for example, by its managing agent under its blanket policy or by an Owner under its or its affiliates' blanket policy); provided, however, that such insurance otherwise complies with this Exhibit D and, in the case of property insurance coverage, such blanket insurance policy shall specify the portion of the total coverage of such policy that is allocated to the Association Insured Property, and any sublimits, if any, in such blanket policy applicable thereto, which amounts shall not be less than the amounts required pursuant to this Exhibit D. The premium for such blanket insurance shall be equitably apportioned among all of the Units or Common Elements covered thereby, with the basis for such apportionment being fully described to the reasonable satisfaction of each Owner upon request.

(2) Any policies required to be maintained by Owner pursuant to this Exhibit D may be maintained by the Owner under a blanket policy or coverages; provided, however, that such insurance otherwise complies this Exhibit D.

(3) The commercial general liability insurance and umbrella liability coverage required to be obtained by the Association as set forth above shall include as additional insureds the Owners, First Mortgagees, any managing agent and such other parties as the Association reasonably elects to add to such coverage. Such coverage and limits shall, in addition to any requirements contained elsewhere herein, conform to and be consistent with industry practice. The Association shall review such limits at least once each year.

EXHIBIT E

LIST OF RECORDED EASEMENTS, LICENSES, AGREEMENTS AND COVENANTS

[To come from title commitment]