

**CONDOMINIUM DECLARATION FOR
TIMBERLINE LODGE CONDOMINIUMS AND MARRIOTT RESIDENCE
INN (OR OTHER SUCCESSOR HOTEL)
VAIL, COLORADO**

THIS CONDOMINIUM DECLARATION FOR Timberline Lodge Condominiums and Marriott Residence Inn (or Other Successor Hotel) (the "Declaration") dated _____, 200_, shall be effective upon recordation and is made by _____, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1. Purpose. The purpose of this Declaration is to create a hotel and condominium project known as Timberline Lodge (the "Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), to elect to have the Property treated as a common interest community and thereby subject the Project to the provisions of the Act and not to the general common law of tenancy-in-common, and to establish a uniform plan for the development, sale and ownership of Units.

Section 1.2. Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners.

Section 1.3. Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.4. Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1. “Act” means the Colorado Common Interest Ownership Act as defined in ARTICLE 1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2. “Additional Improvements” has the meaning set forth in Section 15.2.

Section 2.3. “Additional Reserved Rights” has the meaning set forth in Section 14.1.

Section 2.4. “Allocated Interests” means the undivided interest in the General Common Elements and the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project. The formulae used to establish the Allocated Interests are described in ARTICLE 4. The Allocated Interests for each Unit (ie. the allocated interests in the General Common Elements for all Units, in the Commercial Unit-Devoted Common Elements for the Commercial Units, and in the Residential Unit-Devoted Common Elements for the Residential Units) are as set forth in Exhibit B attached hereto and incorporated herein by this reference.

Section 2.5. “Applicable Laws” has the meaning set forth in Section 3.5.

Section 2.6. “Articles of Incorporation” means the Articles of Incorporation of the Timberline Lodge Condominiums and Marriott Residence Inn (or Other Successor Hotel) Owners Association, Inc. filed with the Colorado Secretary of State as amended from time to time.

Section 2.7. “Assessments” means the annual, special and Default Assessments levied pursuant to this Declaration.

Section 2.8. “Association” means the Timberline Lodge Condominiums and Marriott Residence Inn (or Other Successor Hotel) Owners Association, Inc. a Colorado nonprofit corporation, and its successors and assigns.

Section 2.9. “Board of Directors” or “Board” means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association, and defined as the “Board of Managers” in the Act.

Section 2.10. “Budget” means the annual budget of the project revenues, expenditures (both ordinary and capital) and reserves for the Association. The amount of reserves required by the Commercial Units and the Residential Units may vary according to the reasonable needs for each differing type or class of units as is periodically established by the Board of Directors of the Association.

Section 2.11. “Bylaws” means the bylaws adopted by the Association, as amended from time to time.

Section 2.12. “Class” has the meaning set forth in Section 7.8.

Section 2.13. “Commercial Activities” has the meaning set forth in Section 12.3.

Section 2.14. “Commercial Unit” means any Unit or amenity designated or listed as Commercial in Exhibit B hereto or on the Map, for business or commercial uses, including any Commercial Activities.

Section 2.15. “Commercial Unit Owner” means the owner of the Hotel and Commercial Units.

Section 2.16. “Commercial Unit Expenses” means expenditures made or liabilities incurred by or on behalf of the Association for, in relation to, or reasonably allocated by the Board of Directors against the Commercial Unit-Devoted Common Elements (as opposed to those expenses allocated against the Residential Unit-Devoted Common Elements, or allocated against the General Common Elements as benefiting both the Commercial Units and the Residential Units), together with any allocations to reserves associated therewith such expenses.

Section 2.17. “Commercial Unit-Devoted Common Elements” shall mean those portions of the General Common Elements that are specifically reserved for the exclusive use of the Commercial Unit Owner, its Occupants, guests, agents, tenants, invitees and other representatives, all of which shall be under the exclusive ownership, dominion, control and responsibility (including but not limited to payment of all expenses to maintain or upgrade such devoted common elements) of the Commercial Unit Owner, and which elements shall specifically include, but not be limited to any items designated as Commercial Unit-Devoted Common Elements on the Map, which are generally described as including, but not being limited to, the following areas of the development:

- (a) Sub-Level 2 – designated hotel parking area;
- (b) Sub-Level 1 – entire parking area;
- (c) Level 1 – designated hotel hallways, hotel lobby, hotel work areas, offices, library, hotel entrance area, market, hotel communications room, meeting room and vestibule;
- (d) Level 2 – designated hotel hallways, staff restrooms, small storage closet, housekeeping office, employee breakroom, laundry room, restrooms, hotel mechanical room, hotel electrical room, cold storage area, food preparation area, breakfast bar and hearth room, and breakfast bar terrace;
- (e) Level 3 – designated hotel hallways, and small electrical room; and
- (f) Level 4 – designated hotel spa area, equipment room, vestibule and bathroom.

Section 2.18. “General Common Elements” means all of the Project, other than the Units, but specifically including, without limiting the generality of the foregoing, the following components:

- (a) the Property;
- (b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplaces, chimneys, flues, chimney chases, roofs, patios, decks, balconies, elevator(s), corridors, lobbies, vestibules, entrances and exits, exterior doors and windows, and the mechanical and utility installations and systems consisting of the equipment and materials making up any central services for the entire building (as opposed to services for only the hotel or the condominiums exclusively) such as power, light, gas, hot and cold water, sewer, cable television, telecommunications systems and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith) and the areas designated on the Map as including those installations, trash rooms and storage rooms, elevators and stairs except for the Units;
- (c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens, parking areas, and any amenities and related facilities located upon the Property;
- (d) any areas designated as General Common Elements herein, and as set forth on the Map;
- (e) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of one or more of the Owners;
- (f) in general, all other parts of the Project designated by Declarant as General Common Elements and existing for the use of the Commercial Unit Owner and the Residential Unit Owners;
- (g) any parcels of real property, and improvements and fixtures located thereon, that are (i) owned by a Person other than the Association but in which the Association has rights of use or possession pursuant to this Declaration or to a lease, license, easement or other agreement, and (ii) used or possessed by the Association for the benefit of all Owners;
- (h) the Commercial Unit-Devoted Common Elements; and
- (i) the Residential Unit-Devoted Common Elements.

The General Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the General Common Elements as allocated pursuant to ARTICLE 4, except that (i) the Commercial Unit-Devoted Common Elements shall be treated as being under the

exclusive ownership, dominion and control of the Commercial Unit Owner, with undivided interests and expenses in the Commercial Unit-Devoted Common Elements as allocated in Exhibit B, and (ii) the Residential Unit-Devoted Common Elements shall be treated as being under the exclusive ownership, dominion and control, collectively, of the Residential Unit Owners, with undivided interests and expenses in the Residential Unit-Devoted Common Elements as allocated in Exhibit B.

Section 2.19. “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

- (a) expenses of administration, insurance, operation, and management, repair or replacement of the General Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration and except to the extent that such expenses relate to Commercial Unit-Devoted Common Elements (in which event they shall be treated as Commercial Unit Expenses hereunder) or relate to Residential Unit-Devoted Common Elements (in which event they shall be treated as Residential Unit Expenses hereunder);
- (b) expenses identified as Common Expenses by the provisions of this Declaration or the Bylaws;
- (c) all sums lawfully assessed against the Units by the Board of Directors;
- (d) expenses agreed upon as Common Expenses by the members of the Association; and
- (e) expenses to be paid pursuant to any Management Agreement.

Section 2.20. “Common Expense Liability” means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.21. “Condominium Documents” means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Map, and any Rules and Regulations, procedures, or policies relating to the Project adopted under such documents by the Association or the Board of Directors.

Section 2.22. “Costs of Enforcement” means all monetary fees, fines, late charges, interest, expenses, costs, including receiver’s and appraiser’s fees, collection agency fees, and reasonable attorneys’ fees and disbursements, including legal assistants’ fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

Section 2.23. “Declarant” means Timberline Roost Lodge, LLC, a Colorado limited liability company, and its successors and assigns as the same may be specified in a recorded instrument specifically describing those rights of Declarant transferred to a successor or assignee.

Section 2.24. “Declaration” means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that exercises a Development Right and is executed by Declarant and recorded in the Records. The term Declaration includes the Map and all amendments and supplements to this Declaration and the Map without specific reference thereto.

Section 2.25. “Deed” means each initial deed recorded after the date hereof by which Declarant conveys a Unit and, after the initial sale by Declarant, any deed or other instrument by which an Owner transfers title to a Unit (expressly excluding an instrument creating a Security Instrument).

Section 2.26. “Default Assessment” means an Assessment levied pursuant to this Declaration in connection with an unpaid amount for which an Owner is responsible including, without limitation, for Costs of Enforcement, overdue amounts charged by the Association to an Owner, liability for negligence and indemnification obligations.

Section 2.27. “Development Rights” means all of the expansion rights, withdrawal rights and development rights set forth in ARTICLE 15 of this Declaration, and in the Act.

Section 2.28. “Eligible First Mortgagee” means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive the notices provided for in ARTICLE 19 entitled “Mortgagee Protections.”

Section 2.29. “Expansion Property” has the meaning set forth in Section 15.1.

Section 2.30. “First Mortgagee” means a holder of a Security Interest in a Unit, which has priority over all other Security Interests in the Unit.

Section 2.31. “Improvement(s)” means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or General Common Elements are located, together with landscaping and hardscaping located on the Property.

Section 2.32. “Limited Common Elements” means those parts of the General Common Elements that are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units, excluding the Commercial Unit-Devoted Common Elements and the Residential Unit-Devoted Common Elements. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, hallways, lobbies, entryways, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit’s boundaries, any maid/maintenance closets, laundry facilities, storage spaces, parking spaces, and ski lockers located outside of the Units and designated as “Limited Common Elements” or “LCE” (and not as Commercial Units or areas) in this Declaration or on the Map, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof outside of the Unit but serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the General Common Elements is a part of the General

Common Elements. Limited Common Elements also include any portion of the General Common Elements allocated by this Declaration or on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise set forth in ARTICLE 13. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.33. “Majority of Owners” means a majority of the total voting power of the members of the Association that are eligible and entitled to vote on or consent to or reject the decision or action in question (rather than a majority of those present or voting by proxy at a meeting or the majority of a quorum). Votes allocated to any Units owned by the Association may not be cast and shall not be included in any calculation of voting power.

Section 2.34. “Management Agreement” means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.35. “Managing Agent” means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.36. “Map” means that part of this Declaration that depicts all or any portion of the Project in three dimensions, is executed by Declarant and is recorded in the Records. The Map shall also be a land survey plat as set forth in Section 38-51-106, Colorado Revised Statutes. In a Map, a “Horizontal Boundary” means a plan of elevation relative to a described benchmark that defines either a lower or upper dimension of a Unit such that the real estate respectively below or above the defined plane is not part of the subject Unit. In a Map, a “Vertical Boundary” means the defined limit of a Unit that is not a Horizontal Boundary of that Unit.

Section 2.37. “Nonprofit Act” means the Colorado Revised Nonprofit Corporation Act, Articles 121-137-, Title 7, Colorado Revised Statutes, as may be amended and supplemented from time to time.

Section 2.38. “Occupant” means any member of an Owner’s family or an Owner’s guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the General Common Elements for any period of time, or any other person who occupies a Unit or is on the General Common Elements for any period of time.

Section 2.39. “Owner” means Declarant or any other Person who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any Person having a Security Interest in a Unit unless such Person has acquired record title to the Unit pursuant to foreclosure or other proceedings or by conveyance in lieu of foreclosure.

Section 2.40. “Period of Declarant Control” means the maximum period of time defined and limited by the Act and Section 7.5 of this Declaration during which Declarant may, at its option, control the Association.

Section 2.41. “Person” means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or other legal entity or any combination thereof.

Section 2.42. “Project” has the meaning set forth in Section 1.1 hereof.

Section 2.43. “Property” means the real property described in the attached Exhibit A.

Section 2.44. “Real Estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.45. “Records” means the Office of the Clerk and Recorder in every county in which any portion of the Project is located.

Section 2.46. “Reserved Declarant Rights” means all rights reserved by Declarant in this Declaration, including, without limited the generality of the forgoing, those rights reserved to Declarant in ARTICLE 14 and ARTICLE 15 hereof.

Section 2.47. “Residential Unit” means any Unit or amenity designated or listed as Residential in Exhibit B hereto, for dwelling purposes or dwelling related-amenities, including but not limited to 28 private condominium units and 3 privately owned employee housing units (“EHUs”).

Section 2.48. “Residential Unit Owner” means any owner of a Residential Unit.

Section 2.49. “Residential Unit Expenses” means expenditures made or liabilities incurred by or on behalf of the Association for, in relation to, or reasonably allocated by the Board of Directors against the Residential Unit-Devoted Common Elements (as opposed to those expenses allocated against the Commercial Unit-Devoted Common Elements, or allocated against the General Common Elements as benefiting both the Commercial Units and the Residential Units), together with any allocations to reserves associated therewith such expenses.

Section 2.50. “Residential Unit-Devoted Common Elements” shall mean those portions of the General Common Elements that are specifically reserved for the exclusive use of the Residential Unit Owners, collectively, their respective Occupants, guests, agents, tenants, invitees and other representatives, all of which shall be under the exclusive ownership, dominion, control, and responsibility (including but not limited to payment of all expenses to maintain or upgrade such devoted common elements) of the Residential Unit Owners, and any items designated as Residential Unit-Devoted Common Elements on the Map, which are generally described as including, but not being limited to, the following areas of the development:

- (a) Sub-Level 2 – designated condominium reserved parking and storage area;

(b) Level 1 – designated condominium entryway, condominium community room, condominium electrical room, condominium mechanical room, condominium game room, condominium area hallways;

(c) Level 3 – designated condominium area hallways, condominium spa and equipment room; and

(d) Level 4 – housekeeping closet, east end small storage closet, and electrical room.

Section 2.51. “Rules and Regulations” means the rules and regulations promulgated by the Association for the management, preservation, safety, control, and orderly operations of the Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. Separate Rules and Regulations may be promulgated to apply only to Residential Units, only to Commercial Units, or only to a specific type, class or group of Units.

Section 2.52. “Security Interest” means an interest in Real Estate or personal property created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.53. “Special Declarant Rights” has the meaning set forth in Section 14.1 hereof.

Section 2.54. “Unit” means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration and depicted on the Map. A Unit shall consist of enclosed rooms and shall be bounded by the interior surfaces of Unfinished Perimeter Walls, Unfinished Floors and Unfinished Ceilings thereof, each of which shall be defined as follows:

(a) “Unfinished Perimeter Wall” means the studs, supports and other wooden, metal, or similar structural materials which constitute the interior face of a wall or a Unit.

(b) “Unfinished Ceiling” means the beams, joists, and wooden, metal or other structural materials, which constitute the ceiling of a Unit.

(c) “Unfinished Floor” means the beams, floor joists, and floor deck material, which constitute the floor of a Unit.

A Unit shall include any lath, furring, wallboard, plasterboard, plaster, drywall, wall paneling, wood, tile, paint paper carpeting, or any other wall, ceiling, or floor covering, any fireplace or stove hearth, facing brick, tile or firebox, fixtures and hardware, all improvements contained within the area

bounded by the Unfinished Perimeter Walls, Ceilings, and Floors, and any heating and refrigerating elements or related equipment, utility lines and outlets, telecommunications lines, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, communications, or other utility services to such Unit and located within the Unfinished Perimeter Walls, Ceilings, and Floors; provided, however, that such Unit shall not include any of the structural components of the Improvements or utility or service lines located within such Unit but serving more than one Unit. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B.

Section 2.55. “Withdrawn Property” has the meaning set forth in Section 15.8.

ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1. Division Into Units. The Property is hereby and hereafter divided into those Units identified on Exhibit B, as amended from time to time. The undivided interests in the General Common Elements, the Commercial Unit-Devoted Common Elements, and the Residential Unit-Devoted Common Elements, as allocated in Exhibit B, are hereby declared to be appurtenant to the respective Units (as to General Common Elements), Commercial Units (as to the Commercial Unit-Devoted Common Elements), and Residential Units (as to the Residential Unit-Devoted Common Elements). The total of the undivided interests in the General Common Elements, the Commercial Unit-Devoted Common Elements and the Residential Unit-Devoted Common Elements as set forth in Exhibit B, rounded to the nearest 1%, shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

Section 3.2. Delineation of the Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

Section 3.3. Inseparability of Unit. Except as provided in Section 3.5 below, and in the Article entitled “reservation of Development Rights”: (a) no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with the undivided interests in the General Common Elements, the Commercial Unit-Devoted Common Elements, the Residential Unit-Devoted Common Elements, and all appurtenant rights and interests created by Applicable Law or by this Declaration, including the Owner’s membership in the Association. Notwithstanding the foregoing provisions of this Section, nothing herein shall prevent or limit Declarant’s exercise or enjoyment of any Reserved Declarant Rights.

Section 3.4. Non-Partitionability of General Common Elements. Except as otherwise set forth in these Declarations, the General Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the General Common Elements. By acceptance of a Deed or other instrument of conveyance or assignment to a Unit, each Owner shall be deemed to have specifically waived such

Owner's right, if any, to institute or maintain a partition action or any other cause of action designed to cause a division of the General Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action. Nothing in this Section shall limit Declarant's ability to exercise any Reserved Declarant Rights.

Section 3.5. Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Except as expressly otherwise set forth herein in connection with the Reserved Declarant Rights and in connection with the Commercial Units, Owner(s) may only subdivide their Units, relocate boundaries between their Unit and an adjoining Unit, and/or reallocate Limited Common Elements between or among Units after obtaining the prior approval of the Board of Directors pursuant to the Rules and Regulations and the consent of not less than 75% of all Owners and not less than 75% of all Eligible First Mortgagees of the Units. With regard to Commercial Units, the Owner thereof may reconfigure, consolidate, or split same to increase or decrease hotel room and Commercial Unit size at any time, without the prior approval of the other Owners or the Board of Directors, as long as such reconfiguration, consolidation, or split does not decrease the size or floor space of any of the General Common Elements hereunder. Any such approved change shall also be subject to the applicable provisions and requirements of this Declaration and of the Act and any other law, ordinance, regulation, or requirement of any governmental authority having jurisdiction over the Units or the Project ("Applicable Laws"). Owners shall be responsible for ensuring that all alterations comply with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith.

ARTICLE 4. ALLOCATED INTERESTS

Section 4.1. Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulae set out in Section 4.2 below. These formulae are to be used in reallocating interests if Units are added to the Project or if Units are converted to General Common Elements, Commercial Unit-Devoted Common Elements, Residential Unit-Devoted Common Elements, or Limited Common Elements.

Section 4.2. Formulae for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulae and are shown on Exhibit B.

- (a) Undivided Interest/Percentage Share in the General Common Elements.

The percentage of the undivided interest in the General Common Elements shall be allocated among the Units (including both the Commercial Units and the Residential Units) based upon the square footage of each Unit as compared to the floor area of all Units in the Project.

- (b) Percentage Share of Common Expense Liability.

The percentage of the Common Expense Liability allocated to each Unit is based upon and is equivalent to the percentage of the undivided interest in the General Common Elements allocated to the Unit pursuant to subsection (a). Allocations for common Expense Liability may be further adjusted as set forth in Section 9.3 of this Declaration.

- (c) Undivided Interest/Percentage Share in Commercial Unit-Devoted Common Elements.

The percentage of the undivided interest in the Commercial Unit-Devoted Common Elements shall be allocated among the Commercial Units only, based upon the square footage of each Commercial Unit as compared to the floor area of all Commercial Units in the Project.

- (d) Percentage Share of Commercial Unit Expenses.

The percentage of the Commercial Unit Expense allocated to each Commercial Unit is based upon and is equivalent to the percentage of the undivided interest in the Commercial Unit-Devoted Common Elements allocated to each Commercial Unit pursuant to subsection (c). Allocations for Commercial Unit Expenses may be further adjusted as set forth in Section 9.3 of this Declaration.

- (e) Undivided Interest/Percentage Share in Residential Unit-Devoted Common Elements.

The percentage of the undivided interest in the Residential Unit-Devoted Common Elements shall be allocated among the Residential Units only, based upon the square footage of each Residential Unit as compared to the floor area of all Residential Units in the Project.

- (f) Percentage Share of Residential Unit Expenses.

The percentage of the Residential Unit Expense allocated to each Residential Unit is based upon and is equivalent to the percentage of the undivided interest in the Residential Unit-Devoted Common Elements allocated to each Residential Unit pursuant to subsection (e). Allocations for Residential Unit Expenses may be further adjusted as set forth in Section 9.3 of this Declaration.

- (g) Votes.

The percentage of the voting power in the Association shall be allocated (i) first between the Residential Units and the Commercial Units on the same basis as the allocation of the undivided interests in the General Common Elements, (ii) next among the Commercial Units on any class issue or issue related exclusively to the Commercial Unit-Devoted Common Elements on the same basis as the undivided interest in the Commercial Unit-Devoted Common Elements allocated to the Commercial Units pursuant to subsection (c), and (iii) last among the Residential Units on any class issue or issue related exclusively to the Residential Unit-Devoted Common Elements on the same basis as the undivided interest in

the Residential Unit-Devoted Common Elements allocated to the Residential Units pursuant to subsection (e).

Allocations hereunder based on square footage shall be based on Declarant's determination of square footage as of the date of this Declaration, as reflected on Exhibit B, and variations in actual as-built square footage shall have no effect on the Allocated Interests, as described herein.

Section 4.3. Rounding Convention. Any Allocated Interest, expressed as a percentage, shall be rounded to the nearest one one hundredth of a percent (0.001%). The total of all Allocated Interests shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

Section 4.4. Effective Date of Reallocation. The effective date for reallocating Allocated Interests to Units as a result of the exercise of Development Rights set forth in ARTICLE 15 of this Declaration shall be the date on which the amendment required by Section 15.3 hereof is recorded in the Records.

ARTICLE 5. CONDOMINIUM MAP

The Map shall be filed in the Records. Any Map filed subsequent to the initial Map shall be termed a supplement to the initial Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall satisfy the provisions of Section 38-33.3-209 of the Act and of Section 38-51-106, Colorado Revised Statutes.

The Map shall contain a certificate of a registered and licensed land surveyor certifying that the Map was (a) prepared subsequent to the substantial completion of the Improvements, and (b) contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries; provided, however, that any variation in actual as-built square footage for a Unit shall have no effect on the Allocated Interests, as described herein.

ARTICLE 6. LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1. Contracts to Convey Entered into Prior to Recording of Condominium Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this ARTICLE 6 and may indicate that this Declaration and the Map are to be recorded.

Section 6.2. Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of this Declaration and the Map, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

Unit _____, according to the Condominium Declaration for Timberline Lodge Condominiums and Marriott Residence Inn (or Other Successor Hotel), Vail, Colorado, recorded _____, 200_, at (Reception No. _____) and the Condominium Map for Timberline Lodge Condominiums and Marriott Residence Inn (or Other Successor Hotel), Vail, Colorado, recorded _____, 200_), at (Reception No. _____), in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 6.3. Conveyance Deemed to Include an Undivided Interest in General Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally described the Unit substantially in the manner set forth above shall be construed to include the Unit, together with the undivided interest in the General Common Elements appurtenant to such Unit, as allocated on Exhibit B, and together with all fixtures and improvements contained in such Unit, and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the General Common Elements (subject to any other use restrictions set forth herein).

Section 6.4. Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit, including, without limitation, the General Common Elements appurtenant to any other Unit.

ARTICLE 7. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 7.1. Association Membership. The Articles of Incorporation shall be filed no later than the date Declarant delivers the first Deed conveying a Unit in the Project. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more Persons, shall have more than one membership per Unit owned, but all of the Persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit and Owners owning more than one Unit shall be able to accumulate and add together their voting rights appurtenant to the ownership of each of their Units. Membership in the association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one Person, such Persons shall appoint and authorize one Person or alternate Persons to represent the Owners of the Unit pursuant to the Bylaws, and there shall be a single registered address for each Unit, as applicable, for notice and delivery purposes as further set forth in the Bylaws.

Section 7.2. Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in accordance with Section 4.2; provided, however, no vote allocated to a Unit owned by the Association may be cast. Cumulative voting shall not be allowed in the election of the Board of Directors or for any other purpose. The voting power required for any action or determination shall be calculated in accordance with the Bylaws. A meeting of the Association shall be held at least

once each year, and special meetings of the Association may be called in accordance with the Bylaws.

Section 7.3. Meeting to Approve Annual Budget. Prior to the first levy of any Assessment, and thereafter at the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to review the Budget proposed by the Board of Directors and incorporating any Class directed line item as described in Section 7.8 for the Association's next fiscal year. A summary of the proposed Budget approved by the Board of Directors shall be delivered to the Owners within ninety (90) days after its approval by the Board of Directors along with a notice of a meeting of the Association to be held not fewer than ten (10) nor more than fifty (50) days after delivery of the summary to the Owners. Unless at the meeting more than seventy-five percent (75%) of the voting power of the Association reject the proposed Budget, such Budget shall be deemed ratified whether or not a quorum is present at the meeting. In the event the proposed Budget is rejected, the then existing Budget shall continue in effect until such time as a subsequent Budget is proposed by the Board of Directors and is not rejected in accordance with the above procedures. Specific Budget items applicable to a Class may be modified pursuant to Section 7.9. The Budget shall (i) allocate exclusively to owners of the Residential Units all costs and expenses of general maintenance, cleaning, repair and refurbishing of Residential Unit-Devoted Common Elements based upon their pro rata share of Residential Unit-Devoted Common Elements as set forth in Exhibit B hereto, (ii) allocate exclusively to owners of the Commercial Units all costs and expenses of general maintenance, cleaning, repair and refurbishing of Commercial Unit-Devoted Common Elements based upon their pro rata share of Commercial Unit-Devoted Common Elements as set forth in Exhibit B hereto, and (iii) allocate to the owners of all Units all costs and expenses of general maintenance, cleaning, repair and refurbishing of General Common Elements reserved for the common use of all Owners of any Units (i.e. General Common Elements other than the Commercial Unit-Devoted Common Elements and the Residential Unit-Devoted Common Elements) based upon their pro rata share of General Common Element Expenses as set forth in Exhibit B hereto.

Section 7.4. Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide written notice of the transfer, together with all information required under the Bylaws and/or the Rules and Regulations, to the Association within ten (10) days after the date of transfer. Such Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the Conveyance or transfer as is reasonably acceptable to the Association. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 7.5. Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which Declarant, or Persons designated by Declarant, may appoint and remove the officers of the Association and the members of the Board of Directors. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation and shall terminate no later than the earlier of:

- (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Residential Units that may be created to Owners other than a Declarant;

(b) two (2) years after Declarant's last conveyance of a Unit in the ordinary course of business; or

(c) two (2) years after any right to add new Units was last exercised.

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

Section 7.6. Required Election of Owners. Not later than sixty (60) days after conveyance of seventy-five (75%) of the Residential Units that may be created by Declarant to Owners other than Declarant, at least two (2) members of the Board of Directors (so long as the Board of Directors shall have five (5) or more members) shall be elected by Owners other than Declarant. Not later than the termination of the Period of Declarant Control, the Owners shall elect a Board of Directors of the number of members established pursuant to the Bylaws. The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election. Each member of the Board of Directors shall serve for the term specified in the Bylaws and may be removed only in accordance with the Bylaws.

Section 7.7. Requirements for Turnover of Declarant Control. Within sixty (60) days after the Owners elect the Board of Directors after the termination of the period of Declarant Control as set forth in Section 7.6 above, Declarant shall deliver to the Association (a) all property of the Owners and of the Association held by or controlled by Declarant, and (b) the documents, information, funds and other items required by Section 38-33.3-303(9) of the Act, as further specified in the Bylaws (to the extent they are in Declarant's possession or control).

Section 7.8. Classes of Membership. Owners of Residential Units and Owners of Commercial Units shall each make up a separate class of voting members in the Association (each a "Class") for purposes of voting on certain issues as described in this Section 7.8 and in Section 7.9 below. In the event that Declarant exercises its Reserved Declarant Rights to subject Units to a plan of fractional or vacation ownership, then owners of fractional or club interests in such Units shall be a separate Class of voting members. 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 is related solely to a particular Class or otherwise qualifies as a Class issue, as that term is used in this Declaration, shall be determined in the reasonable discretion of the Board of Directors and based upon the provisions of the Condominium Documents.

Section 7.9. Reserved Powers: Directions to Board of Directors. Notwithstanding anything to the contrary set forth in this Declaration, no issue, action or decision which would

operate to discriminate specifically against any Class or otherwise unreasonably interfere with the operation of the Units owned by the Class, shall be effective without a vote or agreement of at least fifty percent (50%) of the voting power of the Class. The Board of Directors shall be required to act in accordance with the directions of a Majority of Owners within the Class with respect to any Class issue acted upon by such Class, including, without limitation, in the following circumstances:

(a) If the Majority of Owners within the Class votes to change specific items reflected in the Budget that affect only the Class including, without limitation and by way of example, a change in services available to the Class or expenses related exclusively to certain class-devoted common elements, the Board of Directors shall be so notified in writing and the Budget proposed by the Board of Directors pursuant to Section 9.3 for the following years shall include the requested changes.

(b) If the Majority of Owners within the Class votes to change specific items reflected in the Rules and Regulations that affect only the Class, the Board of Directors shall be so notified, in writing, and the Board of Directors shall, at its next meeting, act to effectuate such amendment to act to amend the Rules and Regulations accordingly. Notwithstanding anything to the contrary set forth herein, the Board shall not be required to take any action that would cause a breach of any legal duty of the Board or that would result in a violation of the Act.

ARTICLE 8. ASSOCIATION POWERS AND DUTIES

Section 8.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the General Common Elements, including the maintenance, repair and replacement of the Limited Common Elements, other than routine maintenance for which the Owners are responsible pursuant to Section 10.1. The Association shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those General Common Elements that must be maintained, repaired and/or replaced on a periodic basis. The Association shall adopt and amend, annually, a Budget, which will be the basis for collection of Assessments from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement to provide statements of status of Assessments, as described in Section 9.12. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents and requesting First Mortgagees, all in accordance with the Bylaws.

Section 8.2. Association Powers. The Association shall have, subject to the limitations contained in this Declaration, the Bylaws, and the Act, all powers necessary or appropriate for the administration of the affairs of the Association and the upkeep of the Project, which shall include, but not be limited to, the following:

- (a) Adopt and amend the Bylaws and the Rules and Regulations;
- (b) Adopt and amend the Budget;
- (c) Collect Assessments from Owners;
- (d) Suspend the voting interests allocated to a Unit, and the right of an Owner to cast such votes, or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or during any time in which an Owner is in violation of any other provision of the Condominium Documents;
- (e) Hire and discharge Managing Agents and delegate to such Managing Agents the Power and duty to enforce the Rules and Regulations and other powers and duties of the Association, subject to the requirements of the Act;
- (f) Hire and discharge employees, independent contractors and agents other than Managing Agents;
- (g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Condominium Documents in the Association's name, on behalf of the Association or on behalf of two or more Owners in matters affecting the Project, subject to the mediation and arbitration obligations set forth in Article 22 hereof;
- (h) Adjust and settle insurance claims;
- (i) Receive notices, join in any litigation or administrative proceeding (subject to the mediation and arbitration obligations set forth in Article 22 hereof), and execute any and all documents in the Association's name, on behalf of the Association, or on behalf of the two or more Owners, in connection with any change in zoning, annexation, subdivision approval, building permit, or other type of governmental approval required to accomplish or maintain the purposes of the Association;
- (j) Make contracts and incur liabilities;
- (k) Regulate the use, maintenance, repair, replacement, and modification of all General Common Elements (other than those General Common Elements required to be maintained and repaired by particular Owners or groups or classes of Owners as provided herein), all Association property within the Project or property which serves the Project but which is outside its boundaries;
- (l) Establish policies and procedures for entry into Units under authority granted to the Association in the Condominium Documents for the purpose of cleaning, maintenance and repair (including emergency repair) and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity;

(m) Cause additional improvements to be made as a part of the General Common Elements;

(n) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property (provided that General Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 38-33.3-312 of the Act);

(o) Grant easements, including permanent easements, and grant leases, licenses and concessions, through or over the General Common Elements;

(p) Impose and receive a payment, fee or charge for (i) services provided to Owners, and (ii) for the use, rental or operation of the General Common Elements (other than for the use or rental of the Limited Common Elements);

(q) Establish from time to time, and thereafter impose, charges for late payment of Assessments or any other sums due and, after notice and hearing, levy a reasonable fine for a violation of the Condominium Documents;

(r) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments and for services provided to Owners;

(s) Recover Costs of Enforcement for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated;

(t) Provide for the indemnification of the Association's officers and the Board of Directors to the extent permitted by law and maintain directors' and officers' liability insurance;

(u) Assign the Association's right to future income, including the right to receive Assessments;

(v) Except with respect to members of the Board of Directors appointed by Declarant during the Period of Declarant Control (who may be removed only by Declarant), declare the office of a member of the Board of Directors to be vacant in the event such member is absent from three (3) regular meetings of the Board of Directors during any one year period;

(w) Appoint any committee as required or permitted by the Declaration or the Bylaws, and by resolution, establish committees, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee;

(x) By resolution, set forth policies and procedures which provide for corporate actions and powers which are different than those set forth in the Nonprofit Act, which are

permitted to be “otherwise set forth in the Bylaws.” Such resolutions shall be given the same force and effect as if specifically enumerated in the Declaration or the Bylaws;

(y) Exercise any other powers conferred by the Condominium Documents, the Act, or the Nonprofit Act or that may otherwise be exercised by entities of the same type as the Association under Colorado law; and

(z) Exercise any other power necessary or proper for the governance and operation of the Association.

Section 8.3. Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act with respect to powers reserved to the Owners and the Classes, the Board of Directors may act in all instances on behalf of the Association.

Section 8.4. Board of Directors Meetings. All meetings of the Board of Directors, at which action is to be taken by vote, will be open to the Owners, and agendas for meetings of the Board of Directors shall be made reasonably available for examination by all members of the Association or their representatives, except as set forth in the Bylaws.

Section 8.5. Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after “notice and hearing,” the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, a Managing Agent, etc.) shall give notice of the proposed action to all Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be given not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 8.6. Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from purchasers, at the time of the initial sale by Declarant of each Unit, an amount not to exceed three (3) months’ worth of annual Assessments based on the Association’s Budget in effect at the time of the conveyance. Such payments to this fund shall not be considered advance payments of annual Assessments.

ARTICLE 9. ASSESSMENTS

Section 9.1. Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, Declarant shall pay all Common Expenses. Any Common

Expenses incurred and paid by Declarant prior to the initial Assessment shall be billed by Declarant to and recouped by Declarant from the Association at the time and as part of the initial Assessment. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on the Budget.

Section 9.2. Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit, Commercial Unit Expenses allocated to the Commercial Units, and Residential Unit Expenses allocated to the Residential Units pursuant to this Declaration. The total annual Assessments shall be based upon the Budget. Any surplus funds of the Association remaining after payment of or provision for Common Expenses, Commercial Unit Expenses, and Residential Unit Expenses, and after any prepayment of or provision for reserves, as determined by the Board of Directors, shall be credited to the Owners in proportion, respectively, to their Common Expense Liability, Commercial Unit Expenses, or Residential Unit Expenses to which they relate, or credited respectively to their applicable category and group or type of owner to reduce future Assessments for Common Expenses, Commercial Unit Expenses, or Residential Unit Expenses, as determined by the Board of Directors in its sole discretion.

Section 9.3. Apportionment of Annual Assessments. The total annual Assessments for any fiscal year of the Association shall be assessed to the Units in proportion to their respective percentage of Common Expense Liability, Commercial Unit Expenses and Residential Unit Expenses as shown on Exhibit B, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third Parties or pursuant to service agreements with third parties; (b) Common Expenses associated with the operation, maintenance, repair or replacement of Limited Common Elements, which shall be assessed equally or on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited, and Common Expenses or portions thereof which benefit certain Units more than others which shall be allocated in proportion to such benefit; (d) any increased cost of insurance based upon any undue risk which shall be assessed to Units intentionally causing such undue risks; (e) any Common Expense caused by the misconduct of any Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Owner(s); (f) any Commercial Unit Expenses to be allocated among the Commercial Units; (g) any Residential Unit Expenses to be allocated among the Residential Units; and (h) any expenses which are otherwise charged equally to the Units. All such allocations of Common Expense Liability, Commercial Unit Expenses and Residential Unit Expenses, on a basis other than as set forth in Article 4 above and Exhibit B attached hereto shall be determined by the Board of Directors. To the extent not otherwise provided for herein and to the extent that certain items or services benefit only the Owners of a certain type of Unit and/or within a certain Class or Classes and/or to the extent real or personal property owned by the Association is only available for use by or only benefits the Owners of a certain type of Unit and/or within a certain Class or Classes, costs and expenses associated with such items shall be assessed only against the Owners of such type of Unit or within the applicable Class(es).

Section 9.4. Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer

period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it and any other unbudgeted or unanticipated costs of the Association. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 9.3 above.

Section 9.5. Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the date and in the installments determined by the Board of Directors, as set forth in the Rules and Regulations. If any such installment shall not be paid when due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by Section 38-33.3-315 of the Act or other applicable Law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of the applicable payment period. However, if the Common Expense Liability is re-allocated in accordance with this Declaration, any installment(s) of an Assessment not yet due shall be recalculated to reflect the re-allocated Common Expense Liability.

Section 9.6. Default Assessments. All Costs of Enforcement assessed against an Owner pursuant to the Condominium Documents, or any expense of the Association that is the obligation of an Owner pursuant to the Condominium Documents and is not paid when due shall become a Default Assessment assessed against the Owner's Unit. Notice of the amount and demand for payment of such Default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 9.7. Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Owners, by acceptance of the Deed or other instrument of transfer of such Owner's Unit (whether or not it shall be so expressed in such Deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) Default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payments of the Assessments provided for in this Declaration by not using the General Common Elements or the facilities located on or in the General Common Elements or by abandoning or leasing such Owner's Unit.

Section 9.8. Lien for Assessments; Assignment of Rents. The annual, special, and Default Assessments (including installments of the Assessments) arising under the provisions of the Condominium Documents shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association shall prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate

of default interest as set by the Rules and Regulations, the name of the Owner or Owners, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied. Upon any default in the payment of annual, special, or Default Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or Default Assessments.

Section 9.9. Remedies for Nonpayment of Assessments. If any annual, special, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty days after the same becomes due and payable, then as often as the same may happen, (a) the Association may charge a fee for late payment as set forth in the Rules and Regulations, (b) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default plus any late fee imposed, accruing from the due date until date of payment, (c) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (d) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, (e) the Association may proceed to foreclose its lien pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Colorado law for foreclosure of real estate mortgages, and (f) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 9.10. Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments on the Unit, and notwithstanding the Association's perpetual, self-implementing lien which automatically attaches upon a Unit for such Assessments, all purchasers of a Unit shall be jointly and severally liable with the prior Owner(s) of such Unit for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. All purchasers are responsible for determining with the Association, prior to their purchase, if all Assessments are paid current by the Owner as of the date of sale, and all purchasers take full and complete responsibility for the determination and payment of Assessments as of the date of sale. A Purchaser's obligation to pay Assessments (whether past due from the Prior Owner or incurred after closing by the Purchaser)

shall commence upon the date the purchaser becomes the Owner. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by Deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the Deed or other instruments conveying or transferring title of the Unit, irrespective of the date the Deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 9.11. Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the Deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;
- (b) liens recorded prior to this Declaration unless otherwise agreed by the parties thereto; and
- (c) the lien of any First Mortgagee except to the extent the Act grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a Deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such First Mortgagee acquires title to the Unit except to the extent the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other Persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

The sale or other transfer of any Unit shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof except (a) as provided above with respect to First Mortgagees, (b) in the case of foreclosure of any lien enumerated in this Section, and (c) as provided in the next Section. Further, no such sale or transfer

shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 9.12. Statement of Status of Assessments. Within fourteen calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors as set forth in the Rules and Regulations, any Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Unit;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- (c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and
- (d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the Person or Persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 9.13. Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law, and liens arising under Security Interests, there shall be no other liens obtainable against the General Common Elements or against the interest of any Owner in the General Common Elements (except a Security Interest in the General Common Elements that may be granted by the Association pursuant to the requirements of the Act).

ARTICLE 10. MAINTENANCE RESPONSIBILITY

Section 10.1. Rights and Duties of Owners.

- (a) Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Residential Unit Owner shall be permitted to install any hardwood floor or other hard surface improvements in any Residential Unit.

(b) The Owner of any Unit shall, at the Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. An Owner shall not allow any action or work that will impair the structure soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditaments. Without limiting the generality of the foregoing, with respect to any utility line, cable, conduit, pipe or similar improvement serving a Unit, the Owner shall be responsible for its maintenance and repair from the point at which the improvement meets the boundary of the Limited Common Elements appurtenant to and accessible only from that Unit and the Association shall be responsible for such maintenance and repair where such improvements run on or under the General Common Elements to such point. These clarifying provisions are not intended to and shall not be deemed to expand or alter the obligations of Owners or the Association, as applicable, with respect to utility providers or other service providers. Each Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any Limited Common Element balcony (as well as snow and water removal therefrom) and of any other Limited Common Elements appurtenant to and accessible only from the Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition, provided that the Association (a) shall be responsible for all structural repairs, replacements, and non-routine maintenance and repairs such as painting, (b) may choose to maintain all or any portion of the Limited Common Elements for reasons of uniformity or structural considerations, and (c) may impose standards for maintenance and aesthetic standards applicable to such Limited Common Elements through the Rules and Regulations.

Section 10.2. Owner's Negligence. Except as expressly provided in ARTICLE 17, regarding insurance, in the event that the need for maintenance, repair, or replacement of all or any portion of the Project is caused (i) through or by the negligent or willful act or omission of an Owner or Occupant or (ii) due to the use of, failure to maintain, or emanation, runoff or discharge of any liquids or materials from a particular Owner's Unit resulting in any damage to the building, the Owner's Unit or any other Unit in the building, then the expenses incurred by the Association (or by the Owner of the damaged Unit) for such maintenance, repair, or replacement shall be a personal obligation of the Owner as set forth in sub-clauses (i) and (ii) above; and, if such Owner fails to repay the expenses incurred by the Association within seven days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 10.3. Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Project not required in this Declaration to be maintained and kept in good repair by an Owner. At such times and in the form of such written agreements as are hereafter reasonably determined and requested by Declarant of the Association, the Association shall become responsible for and assume by assignment from Declarant, and fully indemnify Declarant from and against, all duties, obligations and responsibilities that Declarant will be required to undertake and assume by the Town of Vail in connection with any Sidewalk/Streetscape & Snowmelt Maintenance

Agreement (or in any similar or related maintenance, improvement or upkeep agreement) required as part of the Project.

ARTICLE 11. MECHANICS' LIENS

Section 11.1. Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the General Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Unit, against the Unit of another Owner or against the General Common Elements, or any part thereof.

Section 11.2. Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the indemnity provided by the provisions of this ARTICLE 11 by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this ARTICLE 11, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

ARTICLE 12. USE RESTRICTIONS

Section 12.1. Use of Units. Except for uses reserved to Declarant in ARTICLE 14 entitled "Special Declarant Rights and Additional Reserved Rights," all Residential Units shall be used for dwelling purposes only, shall not be used for any retail or general office space purposes whatsoever, and shall otherwise be used only in accordance with all Applicable Laws. Notwithstanding anything to the contrary set forth in the Condominium Documents, Declarant shall have the right to rent any Units owned by Declarant. Subject to the requirements of the Rules and Regulations, the Commercial Units may be used for any purposes and uses permitted by Applicable Law, including but not limited to use for hotel and lodging purposes.

Section 12.2. Use of General Common Elements. Except as may be permitted in the Limited Common Elements pursuant to the Condominium Documents, there shall be no obstruction of the General Common Elements, nor shall anything be kept or stored on any part of the General Common Elements by any Owner without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the General Common Elements by any Owner without the prior written approval of the Board of Directors. Owners and Occupants shall not disturb, damage, or have access to, certain restricted access areas in the General Common

Elements, such as those specified in Section 13.1 and any other areas so designated on the Map or in the Rules and Regulations, or certain limited access areas, such as the Commercial Unit-Devoted Common Elements (which are reserved for use by the Commercial Unit Owner and its Occupants) and the Residential Unit-Devoted Common Elements (which are reserved for use by the Residential Unit Owners and their Occupants).

Section 12.3. Commercial Activities. A variety of commercial activities may be conducted in and adjacent to the Project (as further described below, the “Commercial Activities”). The Commercial Activities may generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities may include, without limitation, to the extent permitted by Applicable Law: (i) public and/or pay parking; (ii) office and retail uses, (iii) retail sales and rentals, (iv) restaurant and bar operations (including, without limitation, sales of food and alcoholic and non-alcoholic beverages for consumption on and immediately adjacent to the Project and at other locations, preparation of hot and cold food and beverages at indoor and outdoor facilities on and immediately adjacent to the Project), (v) sales of services relating to recreational activities, (vi) the operation of hotel, lodging, meeting, parking, and maintenance facilities, (vii) the installation, operation and maintenance of illuminated and non-illuminated signage, (viii) meetings and conferences, and (ix) any other uses or activities permitted by Applicable Law. The Commercial Activities may occur during the day or night. Commercial Activities within the Commercial Units at the Project must comply with any Rules and Regulations applicable to the Commercial Units.

Section 12.4. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the General Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Board of Directors. Nothing shall be done or kept in any Unit or in or on the General Common Elements that would be in violation of any Applicable Law. No damage to or waste of the General Common Elements shall be committed by any Owner or Occupant, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or an Occupant of such Owner’s Unit (including all Costs of Enforcement incurred in the defense of claims arising by reason of this Section or incurred in establishing the right to indemnification). Failure to so indemnify shall be a default by such Owner under this Section and shall give rise to a Default Assessment against such Owner’s Unit. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the foregoing indemnity as a Default Assessment levied against such Unit.

Section 12.5. Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any General Common Element shall be made or caused to be made by any Owner without the prior written approval of Declarant during the Period of Declarant Control and, thereafter, the Board of Directors. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section 12.5. Such Rules and Regulations shall include, but shall not be limited to, requirements that the Owner submit (a)

plans and specifications showing the nature, kind, shape, height, color, materials, and location of the proposed alternations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. Owners shall be responsible for ensuring that all alterations comply with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owners' compliance therewith.

Section 12.6. Pet and Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. The Association may adopt additional restrictions regarding pets in the Rules and Regulations. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or unreasonably offensive to others.

Section 12.7. Limit on Timesharing. No Owner, excluding Declarant, shall offer or sell any interest in a Unit under a "Timesharing," "vacation club," "private residence club," "non-equity club," "fractional plan" or "interval ownership" plan, or any similar plan without the specific prior written approval of Declarant. Any such approval of Declarant shall be subject to the requesting Owner's compliance with all Applicable Laws.

Section 12.8. Restriction on Signs. No signs, billboards, poster boards, exterior lights (blinking or otherwise), or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by Declarant during the Period of Declarant Control and, thereafter, the Board of Directors, except those expressly required to be permitted under the Act (such as certain flags and political signs), if any. Such approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Board of Directors. Any signs that are permitted under the foregoing restrictions shall be erected or maintained only if and to the extent they are in compliance with all Applicable Laws.

Section 12.9. Restrictions on Use of Parking and Storage Areas. Unless written permission is granted by the Board of Directors, (a) no parking shall be permitted at any location on the General Common Elements unless specifically designated for parking by the Association, or in a location designated as a Limited Common Element appurtenant to a specific Unit, and (b) no storage is permitted outside of Units except in specifically designated storage areas, if any. No Owner may use any parking or storage space assigned to another without permission of the Owner to whom the parking or storage space is assigned. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard, or for motor homes, trailers, snowmobiles, boats, jet skis, or other water or snow craft. No Owner may enclose or otherwise erect or construct any type of improvements or other fixtures on, within or in connection with any parking space hereunder. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association may promulgate Rules and Regulations governing parking and storage,

and the Association is specifically authorized, but not obligated, to (i) remove any abandoned or inoperable vehicle, any vehicle parked in any area not designed for parking, or any vehicle parked in any space that is assigned to another Person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, except if and to the extent such parking of such vehicle is expressly required to be permitted under the Act, and (ii) remove any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a Default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration. Notwithstanding the foregoing provisions of this Section, nothing herein shall be construed to prevent Declarant's use of parking spaces or General Common Elements to park vehicles and equipment necessary or desirable for the development and construction of Improvements within the Property or improvements adjacent to the Property.

Section 12.10. No Limitation on Reserved Declarant Rights. Nothing set forth in this Article 12 shall interfere with Declarant's right or ability to exercise its Reserved Declarant Rights.

ARTICLE 13. EASEMENTS

Section 13.1. Easement of Enjoyment; General Common Elements. Every Owner shall have a perpetual non-exclusive right and easement for the use and enjoyment of, and for access over, across, and upon, any portion of the General Common Elements designated for common use (but specifically excluding (i) General Common Elements designated for uses such as maintenance, storage, utility installations and service areas, (ii) Commercial Unit-Devoted Common Elements reserved for Commercial Unit use, and (iii) Residential Unit-Devoted Common Elements reserved for Residential Unit use), which includes the benefit of a non-exclusive easement of access over, across and upon the General Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and, where appropriate, vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;

(b) the right of the Association from time to time to assign on an equitable basis portions of the General Common Elements such as parking spaces or storage for the exclusive use of the Owner of a particular Unit by a resolution of the Board or other appropriate written instrument;

(c) the right of the Association to adopt, from time to time, Rules and Regulations concerning vehicular traffic and travel upon, in, under, and across the Project;

(d) the right of the Association to adopt, from time to time, such Rules and Regulations concerning the Project as the Association may determine are necessary or

prudent for the management, preservation, safety, control, orderly operation, or use of the Project for the benefit of all Owners; and

(e) the agreement of all Owners, pursuant to this Declaration, to use reasonable and good faith efforts not to interfere with the use and enjoyment of other Owners of the General Common Elements and such other Owners' respective Units.

Said easement rights shall likewise extend to the Commercial Unit-Devoted Common Elements as to and among all Commercial Unit Owners, and to the Residential Unit-Devoted Common Elements as to and among all Residential Unit Owners.

Section 13.2. Easement of Enjoyment; Limited Common Elements. Subject to the provisions of this Declaration and the Rules and Regulations, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit.

Section 13.3. Delegation of Use. Any Owner may delegate, in accordance with the Condominium Documents, the Owner's right of enjoyment in the General Common Elements to an Occupant of the Owner's Unit.

Section 13.4. Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, as shown on the recorded Map, or as reserved or granted under this Declaration. The recording data for recorded easements and licenses appurtenant to or included in the Property as of the date of this Declaration is set forth on Exhibit C attached hereto and incorporated herein by this reference.

Section 13.5. Easements for Encroachments. The Project, and all portions of it, are subject to easements hereby created for encroachments between Units and the General Common Elements as follows:

(a) in favor of all Owners, so that they shall have no legal liability when any part of the General Common Elements encroaches upon a Unit;

(b) in favor of each Owner, so that the Owner shall have no legal liability when any part of such Owner's Unit encroaches upon the General Common Elements or upon another Unit; and

(c) in favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 13.5 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of an Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Project. Such encroachment shall be removed at Owner's expense immediately upon notice from the Association.

In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a Default Assessment to the Owner.

Section 13.6. Utility Easements. There is hereby created a general non-exclusive easement upon, across, over, in, and under all of the General Common Elements for ingress and egress and for the purpose of installation, replacement, repair, and maintenance of all utilities and services for the Owners, including but not limited to water, sewer, gas, telephone, electricity, security systems, cable television, cable, and other communication systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the General Common Elements and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the General Common Elements. Any utility or service company using this general easement shall (i) use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association, or Declarant; (ii) complete its installation and maintenance activities as promptly as reasonably possible; and (iii) restore the surface to its original condition as soon as possible after completion of its work. Should any utility or service company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant during the Period of Declarant Control and, thereafter, the Association, shall have the right and authority, but not the obligation, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The Easements provided for in this Section 13.6 shall in no way void, extinguish, or modify any other recorded easement on the Property.

Section 13.7. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

Section 13.8. Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the General Common Elements and a right to make such use of the General Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 13.9. Easements of Access for Repair, Maintenance, and Emergencies. Some of the General Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all General Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the General Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the General Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of an Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the General Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Owners shall be a Common Expense. In order to effectuate this right, the Association shall retain a pass key or other access device to each Unit and an Owner shall not change the exterior lock or other access system on its Unit without the Board's prior written consent and providing the

Association with a replacement key or access device to accommodate the new lock or other access system.

Section 13.10. Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 13, even though no specific reference to such easements or to this ARTICLE 13 appears in the instrument for such conveyance.

Section 13.11. Easement for Warranty Work. To the extent that and for as long as any Person remains liable under any warranty, whether statutory, express or implied, for any act or omission in the development or construction of any portion of the Project, then such Person and its contractors, agents and designees shall have the right, from time to time, to enter the Units (after reasonable notice to the affected Owner) and/or the General Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for such Person to fulfill any of its warranty obligations. Failure of the Association or any Owner to grant such access may result in the applicable warranty being nullified and of no further force or effect.

Section 13.12. Easement Through Commercial Unit for Parking. Declarant, simultaneously with the recording of this Declaration, granted an easement to the Association and the Owners, over, across, and through, the parking garage designated on the Map as a Commercial Unit, for purposes of ingress, egress and access, all as further described in, and subject to the terms and conditions of, that certain Easement Agreement of even date herewith between Declarant and the Association.

Section 13.13. Additional Easements. In the event an additional easement is reasonably requested by an Owner or the Association for purposes consistent with the intent of this Declaration, each Owner and the Association, as applicable, will act reasonably and in good faith in evaluating the request and will not unreasonably withhold its consent to the granting of any such easement.

ARTICLE 14. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 14.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete Improvements indicated on the Map(s) filed with this Declaration.
- (b) Exercise of Development Rights. The right to exercise any Development Right reserved in ARTICLE 15 of this Declaration.
- (c) Sales, Management and Marketing. The right to locate, relocate and maintain sales offices, management offices, signs advertising the Project, and models within the General Common Elements and any Unit or Units owned by Declarant, and the right to remove the same. Declarant shall have the right to show Units and the General Common

Elements to prospective purchasers and to arrange for the use of any parking, storage, or recreational facilities within the General Common Elements by prospective purchasers.

(d) Development Easements. The right to create and grant easements through the General Common Elements to any party for any purpose including, without limitation, purposes of (i) making Improvements within the Project, (ii) the construction and development of Real Estate which may be added to the Project, including, without limitation, the Expansion Property, and/or (iii) exercising any Reserved Declarant Rights.

(e) Master Association. The right to annex into and make the Project subject to a master association.

(f) Sub-Associations. The right to subject any portion of the Project to separate declaration(s) of covenants and/or to create sub-association(s), subject to this Declaration and the Condominium Documents, made up of the owners of such property or interests therein. In the event that Declarant exercises its Reserved Development Rights to subject Units to a plan of fractional or vacation ownership, although the Units submitted thereto shall be deemed to be Residential Units for most purposes of this Declaration, such Units will not be part of the Residential Class, and Declarant anticipates that the Owners of the Commercial Units and the Owners of the Residential Units may each elect to make up a separate sub-association, both subject to this Declaration and to the Association.

(g) Control of Association and Board of Directors. During the Period of Declarant Control, the right to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

(h) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

(j) Signs. The right to maintain signs on the General Common Elements advertising the Project.

(k) Post-Sales. The right to use the General Common Elements to maintain customer relations and provide post-sale and re-sale services to Owners.

(l) Merger. The right to merge or consolidate the Project with another project of the same form of ownership.

(m) Parking/Storage. The right to use and to allow others to use all parking and storage areas (other than parking or storage areas designated as Limited Common Elements appurtenant to Units not owned by the Declarant) in connection with its marketing efforts.

Section 14.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 14.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by grant, dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, ski-ways, drainage, recreation areas, club access, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.

(c) Use Agreements. The rights to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners and/or the Association.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration or of the Act.

Section 14.3. Limitations on Special Declarant Rights and Additional Reserved Rights. Special Declarant Rights and Additional Reserved Rights may be exercised at any time during the period described below in this Section unless sooner terminated (i) by an amendment to this Declaration executed by Declarant; (ii) pursuant to a specific provision for earlier termination set forth above; or (iii) if and to the extent otherwise required under the Act. Any Special Declarant Right or Additional Reserved Rights may be exercised by Declarant so long as Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right; (c) owns any Unit or any interest therein; or (d) holds a Security Interest in any Unit(s); provided, however, all Special Declarant Rights and Additional Reserved Rights shall terminate thirty (30) years after the date of recording this Declaration.

Section 14.4. Interference with Special Declarant Rights or Additional Reserved Rights. Neither the Association nor any Owner may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of Declarant.

Section 14.5. Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this ARTICLE 14 for the benefit of Declarant may be transferred to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such Instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 15. RESERVATION OF DEVELOPMENT RIGHTS

Section 15.1. Expansion Rights. Declarant expressly reserves the right to subject all or any part of the Real Estate or any contiguous property thereto that is now or hereafter acquired by Declarant (the "Expansion Property") to the provisions of this Declaration upon the substantial completion of Improvements on the Expansion Property. The consent of the existing Owners, First Mortgagees or other holders of Security Interests shall not be required for any such expansion. In addition, Declarant also expressly reserves the right to add unspecified Real Estate to the Project as allowed by the Act. Additional development rights not previously reserved may be reserved within all or any portion of the Expansion Property as allowed by the Act.

Section 15.2. Development and Withdrawal Rights. Declarant expressly reserves the right to create Units, General Common Elements (including Limited Common Elements) (the “Additional Improvements”), to combine Units, to subdivide Units, to convert Units into General Common Elements, to convert General Common Elements into Units, and to allocate Real Estate as Limited Common Elements on all or any portion of the Real Estate reserved for future development in this Declaration. Without limiting the generality of the foregoing, Declarant expressly reserves the right (a) to subject Units owned by Declarant, or other portions of the Project that are subject to Development Rights, to a plan of fractional or vacation ownership, (b) to subdivide the Commercial Unit into individual units or parking areas (which parking units would be deemed to be Commercial Units hereunder), and/or (c) to subject the Commercial Unit containing the parking garage to a club, membership, or similar requirement through which owners or members thereof, which may or may not be Owners, are granted a right to use and access certain General Common Elements. Declarant may exercise any or all of the Development Rights so reserved at any time within the period described in Section 15.9 with respect to all or any of the Real Estate identified as subject to Development Rights in the Declaration. No assurances are made with respect to the boundaries of any parcels that may be developed or the order in which the parcels may be developed. Exercise of a Development Right with respect to any one parcel does not require exercise of a Development Right on any other parcel of Real Estate subject to Development Rights. No assurances are made that any further development will occur. If all or any part of the Expansion Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Property that is designated as subject to withdrawal in this Declaration from the Project by recording a document evidencing such withdrawal in the Records; provided, however, that no portion of the Property may be withdrawn after a Unit in that portion of the Property has been conveyed to a purchaser other than Declarant. The Real Estate withdrawn from the Project shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the Project. Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement. The Declarant alone is liable for all expenses in connection with Real Estate subject to Development Rights for as long as the same remains subject to Development Rights.

Section 15.3. Amendment of Declaration. If Declarant elects to submit the Expansion Property, or any part thereof, or Additional Improvements, to this Declaration, or to subdivide or to convert Units or General Common Elements, then at such time as construction of the Improvements on the Expansion Property or the Additional Improvements are substantially complete Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The Allocated Interests apportioned to each Unit in the Project shall be based on the formulae set forth in Section 4.2. Mere subdivision of a Unit shall not change the Allocated Interests of any Unit not included in such subdivision except as expressly set forth in Section 4.2. The amendment to this Declaration shall contain, at a minimum, the legal description of the Expansion Property, or a part thereof, or a description of the Real Estate on which the Additional Improvements being submitted to this Declaration are located and a revised schedule of the Allocated Interests appurtenant to the Units in the Project.

Section 15.4. Supplement to the Map. Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Map showing the location of the Additional

Improvements constructed on the Expansion Property or the construction, combination, subdivision, conversion or allocation of Units or General Common Elements allowed by this Article. The supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 15.5. Interpretation. Recording of amendments to this Declaration, and supplements to the Map, in the Records shall automatically:

- (a) vest in each existing Unit the reallocated Allocated Interests appurtenant to such Unit; and
- (b) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded. The Expansion Property, or any part thereof, or the Additional Improvements constructed on the Property as expanded shall be added to and become a part of the Project for all purposes. All conveyances of Units after such expansion shall be effective to transfer rights in all General Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 15.6. Maximum Number of Units. The maximum number of Units in the Project shall not exceed 250 Units, or, if allowed by the Act, the maximum number of Units allowed by a governmental entity having jurisdiction over the Property, pursuant to any development plan or approvals for the Property and the Expansion Property. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

Section 15.7. Construction Easement. Declarant reserves an easement through, over and across the General Common Elements and Units as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration without consent of any party. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on any of the Property reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the General Common Elements not occupied by an Improvement containing Units. If Declarant grants any such easements, Exhibit C to this Declaration will be amended to include reference to the recorded easement.

Section 15.8. Reciprocal Easements. If all or part of the Expansion Property is not submitted to this Declaration, or if property is withdrawn from the Project ("Withdrawn Property"):

- (a) the Owner(s) of the Expansion Property and/or Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair maintenance and emergencies over and across the Project; and

(b) the Owner(s) in the Project shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance, and emergencies over and across the Expansion Property and Withdrawn Property.

Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the owner(s) of the Expansion Property and the Withdrawn Property and the Owners in the Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section 15.8 shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section 15.8.

Section 15.9. Termination of Development Rights. The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire thirty (30) years after the date of recording this Declaration in the Records, unless the Development Rights are reinstated or extended by the Association as provided in the Act, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise of Development Rights by Declarant. Declarant may at any time release and relinquish some or all of the Development Rights with respect to all or any part of the Real Estate subject to such rights by instrument executed by Declarant and effective when recorded in the Records. Upon the expiration or other termination of the Development Rights, any Real Estate then subject to such rights shall become General Common Elements or Units, as applicable.

Section 15.10. Interference With Development Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish any Development Rights reserved by this ARTICLE 15 without the prior written consent of Declarant.

Section 15.11. Transfer of Development Rights. Any Development Rights created or reserved under this ARTICLE 15 for the benefit of Declarant may be transferred, in whole or in part to any person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 16. INSURANCE

Section 16.1. Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. The Association shall have the power and authority to obtain additional policies or coverages not specified herein in the Board's discretion. If such insurance is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy, or if the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be delivered to all Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for special form covered causes of loss (or such equivalent coverage as may hereafter be customarily offered in the insurance industry) in an amount not less than the full insurable replacement cost of the insured property (as determined by the Board of Directors) less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land and other items normally excluded from property insurance policies. Co-insurance shall not be permitted.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all Persons acting as agents therefor. The Declarant shall be included as an additional insured in Declarant's capacity as an Owner and member of the Board of Directors. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership interest in, existence, use or management of the General Common Elements or membership in the Association. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association shall maintain fidelity insurance on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than three months' current annual Assessments plus reserves, as calculated from the current Budget of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent, shall be an insured employee in the policy of fidelity insurance specified above.

(d) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Owners.

(e) Owners' Policies. Each Owner of a Unit shall obtain additional insurance at such Owner's own cost for such Owner's own benefit covering all personal property within such Owner's Unit and all Improvements within the interior finished boundaries of such Owner's Unit. All such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Owner. 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. Each Owner may also obtain general liability insurance at such Owner's own cost for such Owner's own benefit covering operations and activities within such Owner's Unit. Such coverage may also extend to cover any legal liability imposed on an Owner due to such Owner's interest in the General Common Elements.

Section 16.2. Required Provisions. All insurance policies carried by the Association pursuant to the requirements of this ARTICLE 16 must provide that:

- (a) each Owner and each Eligible First Mortgagee is an insured person under the policy with respect to liability arising out of such Owner's interest in the General Common Elements or membership in the Association;
- (b) the insurer waives its rights to subrogation under the policy against any Owner or member of an Owner's household;
- (c) no act or omission by any Owner or Eligible First Mortgagee, unless acting within the scope of such Owner's authority on behalf of the Association, if any, will void the policy or be a condition to recovery under the policy;
- (d) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the risks covered by the policy (other than an Owner's policy covering such Owner's personal property), the Association's policy provides primary insurance;
- (e) any loss covered by the policies must be adjusted with the Association;
- (f) the insurance process for any loss (other than for an Owner's personal property) shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;
- (g) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest; and
- (h) the insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been delivered to the Association and any Owner(s) and holder(s) of Security Interests to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 16.3. Adjustment of Claims. 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.

Section 16.4. Copies of Policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by any Owner at reasonable times.

ARTICLE 17. RESTORATION UPON DAMAGE OR DESTRUCTION

Section 17.1. Duty to Restore. Any portion of the Project, for which the Association is required to carry insurance under the Act, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Project is terminated;
- (b) repair or replacement would be illegal under Applicable Law;
- (c) seventy-five percent (75%) of the actual total voting power of the Owners (rather than seventy-five percent of those present or voting by proxy at a meeting or a Majority of a quorum), vote not to rebuild; or
- (d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by subsections (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications that have been approved by the Board of Directors and any percentage of Owners required to approve the same under the Act.

Section 17.4. Replacement of Less Than Entire Property. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged General Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project and, except to the extent that other persons will be distributed:

- (a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed or credited to the Owner(s) of the Unit and to the Owner(s) of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;
- (b) the remainder of the proceeds must be distributed or credited to each Owner or holder of a Security Interest, as their interests may appear, in proportion to the Allocated Interests in the General Common Elements of all the Units; and
- (c) if the Owners vote not to rebuild a Unit, the Allocated Interests of the Unit shall be reallocated as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

Section 17.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration and the Act. Except to the extent otherwise required by the Act, no provision of the Condominium Documents shall be construed to grant to any Owner, any priority over any rights of any First Mortgagees pursuant to the terms of their Security Interests in the case of the distribution to Owners of insurance proceeds for losses to Units and/or the General Common Elements or any portions thereof.

Section 17.6. Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

- (a) whether or not damaged or destroyed Property is to be repaired or restored; and
- (b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 17.7. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or holders of Security Interests, the Board of Directors, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Owners and the holders of Security Interest.

ARTICLE 18. CONDEMNATION

If all or part of the Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

ARTICLE 19. MORTGAGEE PROTECTIONS

Section 19.1. Introduction. This ARTICLE 19 establishes certain standards and covenants that are for the benefit of First Mortgagees. This ARTICLE 19 is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 19.2. Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of the stated percentage of the voting

power of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to the same voting power as allocated to the encumbered Unit.

Section 19.3. Notice of Actions. The Association shall give prompt written notice of the following to each Eligible First Mortgagee:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the General Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;
- (b) If requested by such Eligible First Mortgagee, any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a Security Interest held by such Eligible 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 Eligible First Mortgagees as set forth in this Article;
- (e) Any judgment rendered against the Association having a material effect on the ability of the Association to perform its obligations herewith; and
- (f) If requested by such Eligible First Mortgagee, a copy of any financial statement of the Association.

Section 19.4. Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of seventy-five (75%) of the Eligible First Mortgagees:

- (a) sale, conveyance or encumbrance of the General Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other purposes provided for by this Declaration will not be deemed a transfer within the meaning of this clause);
- (b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;
- (d) merger of the Project with any other common interest community; or
- (e) any decision not to repair or to replace the General Common Elements when repair or replacement is otherwise required under this Declaration.

Section 19.5. Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment

or action requiring the approval of Eligible First Mortgagees within sixty (60) days following the receipt of notice of such proposed amendment or action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 19.6. First Mortgagees' Rights.

(a) Advances. 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 General Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies for the General Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by a 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.

Section 19.7. Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this ARTICLE 19 shall operate to:

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

(b) prevent the Association or Board of Directors from commencing, intervening and/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 17 entitled "Restoration Upon Damage or Destruction."

Section 19.8. Reserved Declarant Rights. No provisions or requirement of this ARTICLE 19 entitled "Mortgagee Protections" shall apply to or contravene any Reserved Declarant Rights reserved to Declarant in this Declaration.

Section 19.9. Lien Protection for Mortgagees. Except as set forth in the Act or as required by other Applicable Law, no violation or breach of or failure to comply with any provision of the Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Security Interest taken in good faith or for value and perfected by recording in the Records, nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such Security Interest or the title or interest acquired by any purchaser upon foreclosure of any such Security Interest or other lien.

ARTICLE 20. DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 20.1. Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to the terms hereof.

Section 20.2. Amendment of Declaration. This Declaration may be amended as follows:

(a) General Amendments. Except as otherwise expressly permitted or restricted by this Section 20.2, this Declaration may be amended only by a vote or agreement of Owners holding at least seventy-five percent (75%) of the total voting power of the Association. To the extent the proposed amendment involves an issue subject to Class voting, a majority of a quorum of the Owners in the affected Class will also be required, such that the seventy-five percent (75%) must include a majority of a quorum of the Owners in such Class.

(b) Permitted Use Amendments. Except to the extent otherwise expressly permitted or required in this Declaration, this Declaration may be amended to change the uses to which any Unit is restricted only by a vote or agreement of Owners holding at least seventy-five percent (75%) of the total voting power of the Association, including a majority of the voting power allocated to any Class directly affected by such amendment (e.g., amendments changing uses for Commercial Units).

(c) Allocated Interest Amendments. Except to the extent otherwise expressly permitted or required in this Declaration or under the Act, this Declaration may be amended to increase Reserved Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit only by a vote or agreement of Owners holding at least seventy-five percent (75%) of the total voting power of the Association.

(d) Reserved Amendment Rights. To the extent that this Declaration and the Act expressly permit or require amendments that may be executed by Declarant or by the Association, this Declaration may be amended by amendments executed solely by Declarant or solely by the Association. To the extent not prohibited by the Act, Declarant may execute any amendment required or necessary to comply with Applicable Law and any amendment required or appropriate to comply with the secondary mortgage market or Colorado state regulatory requirements. In the event of an amendment by the Declarant in connection with the exercise of the Reserved Declarant Rights pursuant to the terms of this Declaration, recording of such amendments to this Declaration and any associated supplement to the Map in the Records shall automatically:

(i) vest in each existing Owner the reallocated Allocated Interests appurtenant to such Owner's Unit; and

(ii) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of such an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as expanded. All conveyances of Units after such expansion shall be effective to transfer rights in all General Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 20.3. Amendment of Other Condominium Documents. The Articles of Incorporation and Bylaws may be amended in accordance with the terms of such documents and the Nonprofit Act. The Rules and Regulations may be amended as determined by the Board of Directors.

Section 20.4. Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) Declarant, to the extent the right to amend this Declaration is reserved to Declarant and exercised by Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 20.5. When Modifications Permitted. Notwithstanding the provisions of Section 20.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 20.6. Recording of Amendments. Any amendment to this Declaration made in accordance with this ARTICLE 20 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of Declarant or the Secretary of the Association, as applicable, stating that the required vote of Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable), if any, were obtained and are on file in the office of the Association or were not required to be obtained pursuant to this Declaration or the Act. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

Section 20.7. Rights of Declarant. Notwithstanding anything to the contrary contained herein, and to the extent permitted by the Act, no amendment or modification to, or impairment of any of the rights contained in, any of Section 12.8, ARTICLE 14, ARTICLE 15, Section 20.5, this Section 20.7 or ARTICLE 21 shall be effective or enforceable without the prior consent of Declarant during the Period of Declarant Control or, if longer and if permitted by the Act, during the period in which Declarant continues to hold Special Declarant Rights and Additional Reserved Rights.

Section 20.8. Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Owners or the Association as a condition to the effectiveness of those actions as provided in ARTICLE 19 entitled "Mortgagee Protections."

Section 20.9. Termination of the Project. The Project may only be terminated as provided in the Act.

ARTICLE 21. MISCELLANEOUS

Section 21.1. Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopier, facsimile, or electronic mail.

Section 21.2. Nonwaiver. Failure by Declarant, the Association, or any Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 21.3. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of this Declaration by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision that would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 21.4. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 21.5. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of the Declaration or the intent of any provision of this Declaration.

Section 21.6. Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 21.7. Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 21.8. Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado, and specifically, the provisions of the Act and not the general common law (including remedies) of tenancy-in-common.

Section 21.9. Third Party Beneficiary. This Declaration is submitted, imposed, and declared solely for the benefit of Declarant, Owners, First Mortgagees, and their respective successors, assigns, heirs, executors, administrators, and personal representatives. No party shall be deemed a third party beneficiary of this Declaration.

Section 21.10. Severability. If any term, covenant or provision of this Declaration is held to be illegal, unenforceable or void against public policy for any reason, the same will not invalidate any other terms, covenant or provision hereof, and all remaining terms, covenants and provisions hereof shall remain in full force and effect. Any such invalidated term, covenant or provision hereof shall be deemed as void ab initio, but any such invalidated term, covenant or provision shall be modified as best as possible to reflect the parties' original intention. The parties hereto do not intend to implement any provisions herein that are unenforceable or void against public policy, and acknowledge that continuing changes in the law may make or have made certain provisions contained herein unenforceable upon the implementation hereof or at undetermined times in the future. As such, this paragraph is included, in good faith, to address situations that may arise regarding the unenforceability of any provisions contained herein as originally drafted or thereafter interpreted.

ARTICLE 22. ENFORCEMENT

Section 22.1. Enforcement. Subject to the provisions of Section 22.2 and Section 22.3 regarding the mediation and arbitration and resolution of Construction Disputes (as defined below), the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Condominium Documents may be enforced through any proceedings at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. Subject to the requirements of Section 22.2 and Section 22.3, the Association and any aggrieved Unit Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the Condominium Documents. The prevailing party in any action instituted or maintained under this Section 22.1 shall be entitled to all Costs of Enforcement, as well as any and all other sums awarded by the Court. Failure by the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter.

Section 22.2. Mediation and Arbitration. Upon the written demand of any Unit Owner, Declarant or the Association (for purposes of this Section 22.2, each of which is called a "party" and any two or more of which are called "parties"), any Dispute other than a Construction Dispute, shall be resolved by mediation, or if mediation is not successful, by binding arbitration in accordance with the terms of this Section 22.2. Mediation shall be required prior to any arbitration only if one of the parties submits a demand for mediation in accordance with Section 22.2(a).

For the purposes of this Article, "Dispute" shall mean any dispute, action, claim or controversy, whether sounding in law, equity, contract or tort (excluding, however, tort claims arising from physical bodily injury) between the Declarant, the Association and/or any one or more Unit Owners that: (i) concerns or requires the application of any provision of the Condominium Documents; (ii) concerns or requires the application of any provision of the Act; (iii) arises from any

act, omission, transaction or occurrence in any Unit or in or on any General Common Element; or (iv) concerns any Unit or General Common Element or any improvement or item of tangible personal property in or on a Unit or General Common Element. Notwithstanding the foregoing, the term Dispute shall expressly exclude: (a) any action by any party to seek or obtain a temporary restraining order, preliminary injunction or similar equitable order or decree; (b) any action by any party to compel arbitration or enforce a temporary restraining order, preliminary injunction, permanent injunction or similar equitable order or decree, or any award or decision of any arbitration conducted pursuant to Section 22.2; (c) any action by the Association to assess or collect any Assessments or to enforce or foreclose any lien for such Assessments; (d) any action by the Association to enforce the provisions of this Declaration concerning use restrictions; (e) any action pursuant to the provisions of this Declaration concerning mechanics liens; and (f) any action arising from an express, written warranty.

(a) Mediation. A written demand for mediation shall be made within a reasonable time after the Dispute has arisen. In the case of a Construction Dispute, the requirements of Section 22.3(a) shall substitute for mediation. The Dispute shall be mediated by a mutually acceptable mediator to be chosen by the parties within thirty (30) days after the demand for mediation. No party may unreasonably withhold consent to the selection of a mediator, and each party shall share the costs of mediation equally. If the parties are unable to resolve the Dispute by mediation within one hundred twenty (120) days after the demand for mediation, then any party may make a demand for the resolution of the Dispute by arbitration in accordance with the terms of Section 22.2(b); provided, however, that no proceedings for arbitration of a Dispute, or a Construction Dispute as hereinafter defined (or litigation of the same in the event any judicial proceeding is allowed or had) shall be commenced by the Association unless prior to the initiation of the arbitration or litigation, such action is approved by the vote of Unit Owners holding at least three-quarters (3/4ths) of the voting power of the Unit Owners entitled to vote.

(b) Arbitration. A demand for the resolution of a Dispute by arbitration must be made in writing within a reasonable time after the party has complied with the requirements of Section 22.2(a) and becomes entitled to submit the Dispute to arbitration. The demand for arbitration shall be delivered to the other party(ies) and the American Arbitration Association (the "AAA") before the date when commencement of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations. In no event shall the demand for arbitration of a Dispute be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. Any party who fails to submit to binding arbitration regarding a Dispute following a lawful demand by the opposing party shall bear all costs and expenses, including reasonable attorneys' fees, incurred by the opposing party in compelling arbitration of such Dispute. Except as otherwise provided in this Section 22.2(b) or by the express written agreement of the parties, the AAA shall administer all aspects of arbitrations conducted pursuant to this Section 22.2(b), including selection of arbitrators, pursuant to the AAA's Commercial Arbitration Rules. Except as provided below with respect to enforcing the decision of the arbitrator(s), once a Dispute is submitted to arbitration, the claims involved cannot later be brought, filed or pursued in any court.

All arbitration of Disputes shall be conducted in the greater Denver, Colorado metropolitan area. Except with respect to any Dispute involving, in the aggregate, claims and counterclaims of less than Ten Thousand Dollars (\$10,000), arbitration hereunder shall be before a three (3) person panel of neutral arbitrators consisting of persons from either of the following categories, but at least one (1) from each category: (i) an attorney who has practiced in the area of real estate development law for at least ten (10) years or a retired judge at the district court or an appellate court level; or (ii) a person with at least ten (10) years experience in the residential construction industry. Any Dispute involving, in the aggregate, claims of less than Ten Thousand Dollars (\$10,000) shall be resolved before a single arbitrator meeting the qualifications set forth in clause (i) of the preceding sentence. The AAA shall submit a list of persons meeting the criteria outlined above for each category of arbitrator, and the parties shall select one (1) person from each category in the manner established by the AAA. Arbitrations conducted pursuant to the terms of Article 22 will be governed by Colorado law. The orders of the arbitrator(s) shall be in writing and shall specify the factual and legal basis for the decision. The results of any arbitration conducted pursuant to this Article 22 shall be binding and final, and the decision of the arbitrator(s) may be filed, converted and enforced as a judgment, order or decree in the District Court of the County.

(c) Actual Damages. Except as provided in Section 22.2(d) and Section 22.3(b) with regard to awards of attorneys' fees and expenses, no party shall be entitled to receive any award of damages in connection with the arbitration of a Dispute (or litigation of the same in the event any judicial proceeding is allowed or had), other than such party's actual damages, and Declarant, the Association and any Owner shall be deemed to have waived their right to receive any damages other than actual damages in a Dispute, including without limitation special damages, consequential damages and punitive or exemplary damages.

BY TAKING TITLE TO A UNIT, EACH UNIT OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARDS OF DAMAGES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE, (OR LITIGATION OF THE SAME IN THE EVENT ANY JUDICIAL PROCEEDING IS ALLOWED OR HAD) OTHER THAN OWNER'S ACTUAL DAMAGES, AND THAT THE WAIVER OF SUCH RIGHTS, AWARDS AND DAMAGES IS A MATERIAL PORTION OF THE CONSIDERATION GIVEN BY OWNER IN CONNECTION WITH ITS ORIGINAL OR ACQUISITION OF THE PURCHASE OF ITS UNIT .

(d) Recovery of Fees and Expenses. The arbitrator(s) shall make an award of attorneys' fees and expenses, including the fees and expenses of the arbitrator(s) to the prevailing party; provided, however, that if the decision of the arbitrator(s) is not wholly in favor of one party, the arbitrator(s) shall allocate such fees and expenses between the parties; and, provided further, that the arbitrator(s) shall also make an award for recovery of such fees and expenses as required by Section 22.3(b).

Section 22.3. Construction Disputes. Any Dispute which relates to or arises out of the physical condition of the General Common Elements or a Unit and involves the Declarant in a position adverse to the Association and/or any Unit Owner(s) shall be deemed a "Construction

Dispute,” and shall be subject to the provisions of this Section 22.3, in addition to the arbitration provisions of Section 22.2 above. To the extent a Construction Dispute, as defined below, is covered by the Construction Defect Reform Act of 2003, C.R.S. §13-20-801 et. Seq. as it is in effect as of the date hereof (the “CDRA”), arbitration shall be required in accordance with this Article 22 but the CDRA shall govern with respect to such Construction Dispute. If the CDRA is abrogated or is not enforced by Colorado courts at the time of a Construction Dispute, the following procedures and limitations shall govern.

(a) Construction Dispute Procedures. Prior to invoking binding arbitration under subsection 22.2(b) above, the Association or the Owner, as applicable (the “Initiating Party”) shall deliver written notice (a “Dispute Notice”) to the Declarant specifying the particular defects that are the subject of the Construction Dispute, together with copies of all studies, surveys, reports and other documents relating thereto. The Dispute Notice shall contain the current mailing address for the Initiating Party.

Within forty-five (45) days after receiving the Dispute Notice, the Declarant may deliver to the Initiating Party a written notice (the “Response Notice”) designating a time and place for a meeting between the Declarant and the Initiating Party to discuss the Construction Dispute; provided, however, that such meeting shall take place within the Project or at the Declarant’s principal place of business, and shall occur not less than seven (7) nor more than thirty (30) days after delivery of the Response Notice. In the context of a Construction Dispute, this meeting replaces any requirement for or right to mediation pursuant to Section 22.2(a). Prior to the meeting, the Declarant may make an initial on-site inspection of the alleged defects in the General Common Elements or Units identified in the Dispute Notice. Upon delivery of the Response Notice, all statutes of limitations applicable to the claim against the Declarant shall be tolled. If the Declarant does not deliver the Response Notice within the forty-five (45) day period, the Initiating Party may institute binding arbitration. After the meeting designated in the Response Notice, the Association and the Owners shall make available for further inspection and investigative testing all General Common Elements and Units identified in the Dispute Notice. The Declarant shall pay all costs to restore any portions of the General Common Elements and Units damaged by Declarant’s inspection and/or testing to its condition prior to such inspection and testing and shall indemnify the Association for any damages arising from the inspection and/or testing. All inspections and testing shall be completed within one hundred fifty (150) days after delivery of the Response Notice, unless otherwise mutually agreed upon by the parties.

Within two hundred ten (210) days after delivery of the Response Notice, the Declarant may submit a written statement to the Association setting forth the Declarant’s proposed settlement of the Construction Dispute (an “Offer”) and stating whether the Declarant proposes to repair or replace the defects at issue, to pay the Initiating Party a cash sum in connection therewith, or a combination thereof, or to repurchase the Unit(s). If the Offer is accepted, the Declarant and its agents, employees and subcontractors shall be provided full access to the Project, including the Units, to take and complete the corrective action set forth in the Offer. If the Declarant does not deliver an Offer within two hundred ten (210) days after delivery of the Response Notice or if the Offer is rejected, the Initiating Party may proceed to Binding Arbitration pursuant to Section 22.2(b).

At any time after delivering the Response Notice the Declarant may terminate the tolling of the statute of limitations provided in this subsection (a) by delivery of thirty (30) days prior written notice thereof (the "Termination Notice") to the Initiating Party. Upon delivery of the Termination Notice, the Initiating Party shall be relieved of all further obligations to satisfy the conditions of this subsection (a) and may initiate Arbitration pursuant to Section 22.2(b). Notwithstanding the provisions of this Section 23, the tolling of any statute of limitations pursuant to this subsection (a) shall automatically cease two hundred forty (240) days following the delivery of the Response Notice. If the Initiating Party desires to assert another Dispute not set forth in any prior Dispute Notice delivered to the Declarant by the Initiating Party, the Initiating Party shall be required to satisfy all of the conditions and requirements of this Section 22.3 with respect thereto.

(b) Limit on Recovery of Fees and Expenses in Construction Disputes. If any Construction Dispute proceeds to arbitration and the final award or decision (not including costs, expenses, attorneys' fees and/or interest which are incurred after the receipt of Declarant's Offer pursuant to this Section 22.3) is less favorable to the Initiating Party than the Offer, then the Initiating Party shall not be entitled to recover fees and expenses regardless of whether the Initiating Party is determined to be the prevailing party. Further, if the final award or decision or judgment (not including costs, expenses, attorneys' fees and/or interest which are incurred after Initiating Party's receipt of the Declarant's Offer) is less than or equal to the Offer, the Initiating Party shall be responsible for all of Declarant's costs and expenses (including reasonable attorneys' fees) incurred after Initiating Party's receipt of the Offer and the fees and costs shall be deducted by Declarant from any amounts otherwise due to Initiating Party. If Declarant's fees and expenses to be paid by Initiating Party exceed the amount otherwise due from the Initiating Party to Declarant, the Initiating Party shall pay the difference to Declarant within ten (10) days of Declarant's written demand.

[Remainder of Page Intentionally Left Blank]

MORTGAGEE'S CONSENT

The Undersigned hereby consents to the execution and recording of the foregoing Declaration and hereby subordinates the lien of its Deed of Trust, dated _____ and recorded _____ in Book ____ at Page ____ as Reception No. ____ in the records of _____ County, Colorado, to this Declaration and the effect hereof.

Dated this ____ day of _____, 200__.

[DECLARANT'S LENDER]

By: _____
Name: _____
Title: _____

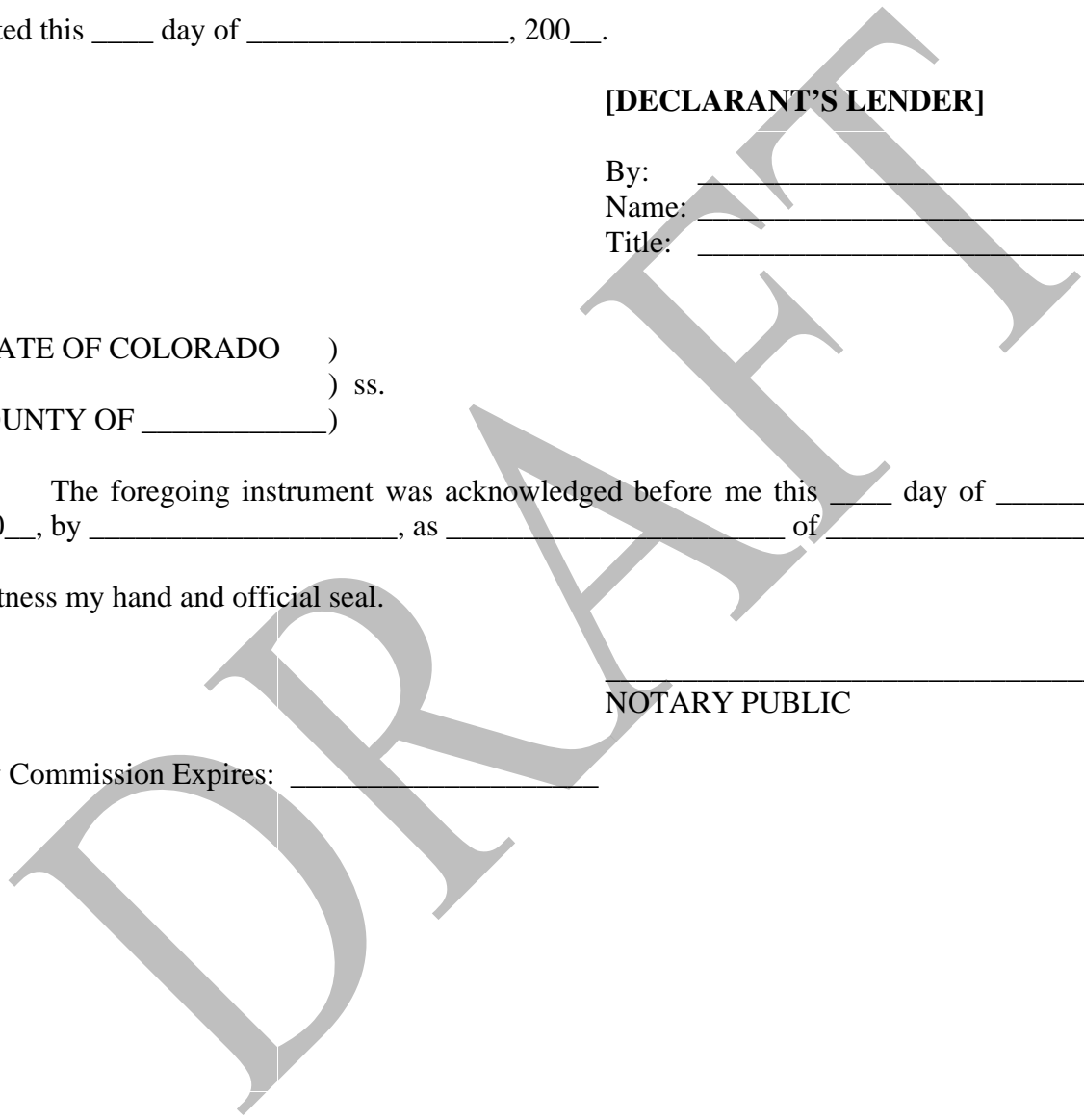
STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, as _____ of _____.

Witness my hand and official seal.

NOTARY PUBLIC

My Commission Expires: _____



**Exhibit A
to
Declaration**

LEGAL DESCRIPTION

The Property referred to in the Declaration is described as follows:

DRAFT

**Exhibit B
to
Declaration**

TABLE OF ALLOCATED INTERESTS

Allocated Interests for Residential Units

[1] Condominium Unit #	[2] Approximate Square Footage	[3] % Share of Non-Devoted General Common Element Expenses and Vote in General Affairs of Association	[4] % Share of Residential Unit-Devoted Common Element Expenses and Vote in Affairs Related To Residential Unit Class Matters /
1			%
2			%
3			%
4			%
5			%
6			%
7			%
8			%
9			%
10			%
11			%
12			%
13			%
14			%
15			%
16			%
17			%
18			%
19			%
20			%
21			%
22			%
23			%
24			%
25			%
26			%
27			%
28			%
Level 3 EHU			
Level 4 EHU #1			
Level 4 EHU #2			
Totals		__%	100%

Allocated Interests for Commercial Units

[1] Hotel Rooms/ Commercial Units	[2] Approximate Square Footage	[3] % Share of Non Devoted General Common Element Expenses and Vote in General Affairs of Association	[4] % Share of Commercial Unit-Devoted Common Element Expenses and Vote in Affairs Related To Commercial Unit Class Matters
Level 1 Hotel Rooms (__ rooms)			
Level 1 Hotel Front Desk and Offices			
Level 2 Hotel Rooms (__ rooms)			
Level 3 Hotel Rooms (__ rooms)			
Totals		__%?	100%

DRAFT

**Exhibit C
to
Declaration**

EASEMENTS AND LICENSES OF RECORD

DRAFT

TABLE OF CONTENTS

ARTICLE 1.	IMPOSITION OF COVENANTS.....	1
ARTICLE 2.	DEFINITIONS.....	2
ARTICLE 3.	DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP	10
ARTICLE 4.	ALLOCATED INTERESTS.....	11
ARTICLE 5.	CONDOMINIUM MAP.....	13
ARTICLE 6.	LEGAL DESCRIPTION AND TAXATION OF UNITS.....	13
ARTICLE 7.	MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION.....	14
ARTICLE 8.	ASSOCIATION POWERS AND DUTIES	17
ARTICLE 9.	ASSESSMENTS.....	20
ARTICLE 10.	MAINTENANCE RESPONSIBILITY.....	25
ARTICLE 11.	MECHANICS' LIENS.....	27
ARTICLE 12.	USE RESTRICTIONS	27
ARTICLE 13.	EASEMENTS.....	30
ARTICLE 14.	SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS	33
ARTICLE 15.	RESERVATION OF DEVELOPMENT RIGHTS.....	35
ARTICLE 16.	INSURANCE	38
ARTICLE 17.	RESTORATION UPON DAMAGE OR DESTRUCTION.....	41
ARTICLE 18.	CONDEMNATION.....	42
ARTICLE 19.	MORTGAGEE PROTECTIONS	42
ARTICLE 20.	DURATION OF COVENANTS; AMENDMENT AND TERMINATION	45
ARTICLE 21.	MISCELLANEOUS	47
ARTICLE 22.	ENFORCEMENT.....	48