

**CONDOMINIUM DECLARATION  
OF  
TIMBER RIDGE VILLAGE**

Name of Common Interest Community:

**TIMBER RIDGE VILLAGE**

Type of Common Interest Community:

**CONDOMINIUM**

Name of the Association:

**TIMBER RIDGE VILLAGE OWNERS' ASSOCIATION,  
INC.**

Declarant:

**TRIUMPHTIMBER RIDGE, LLC**

## TABLE OF CONTENTS

ARTICLE 1 – DECLARATION AND SUBMISSION .....	1
ARTICLE 2 -- DEFINITIONS .....	1
2.1 ACT.....	1
2.2 AGENCY.....	1
2.3 ALLOCATED INTERESTS .....	2
2.4 ARTICLES.....	2
2.5 ASSESSMENTS.....	2
2.6 ASSOCIATION .....	2
2.7 ASSOCIATION DOCUMENTS .....	2
2.8 ASSOCIATION – INSURED PROPERTY.....	2
2.9 BOARD.....	2
2.10 BUDGET .....	2
2.11 BUILDING OR BUILDINGS .....	2
2.12 BYLAWS .....	2
2.13 CLERK AND RECORDER .....	2
2.14 COMMON ELEMENTS .....	2
2.15 COMMON EXPENSE SHARING RATIO.....	3
2.16 COMMON EXPENSES .....	3
2.17 CONTRACTOR .....	3
2.18 COUNTY .....	3
2.19 DECLARANT .....	3
2.20 DECLARATION .....	3
2.21 DEVELOPMENT RIGHTS .....	3
2.22 DESIGN GUIDELINES.....	3
2.23 ENVIRONMENTAL LAW .....	3
2.24 ESTOPPEL CERTIFICATE .....	4
2.26 EXPANSION AREA.....	4
2.26 EXPENSE SHARING RATIOS .....	4
2.27 FIRST MORTGAGE.....	4
2.28 FIRST MORTGAGEE.....	4
2.29 GENERAL ASSESSMENT.....	4
2.30 GENERAL COMMON ELEMENTS .....	4
2.31 GENERAL COMMON EXPENSES .....	5
2.32 GENERAL EXPENSE SHARING RATIO .....	5
2.33 GOOD STANDING.....	5
2.34 GROSS FLOOR AREA.....	5
2.35 HAZARD INSURANCE.....	5
2.36 HAZARDOUS MATERIALS .....	5
2.37 IMPROVEMENTS.....	5
2.38 INCLUDING OR INCLUDE .....	6
2.39 LIABILITY INSURANCE .....	6
2.40 LIMITED COMMON ELEMENTS .....	6
2.41 LIMITED COMMON EXPENSES .....	6
2.42 LIMITED EXPENSE SHARING RATIO .....	6
2.43 MANAGING AGENT.....	6
2.44 MAP .....	6

2.45	MEMBER.....	6
2.46	MORTGAGE.....	6
2.47	MORTGAGEE.....	6
2.48	NONPROFIT ACT .....	6
2.49	OWNER .....	6
2.50	OWNER MAINTENANCE MANUAL .....	6
2.51	PARKING SPACES.....	7
2.52	PERIOD OF DECLARANT CONTROL.....	7
2.53	PERMITTEES.....	7
2.54	PLANS .....	7
2.55	POLICIES .....	7
2.56	PROJECT.....	7
2.57	PROJECT MAINTENANCE MANUAL .....	7
2.58	REPAIR WORK .....	7
2.59	REQUISITE PERCENTAGE OF OWNERS AND FIRST MORTGAGEES .....	7
2.60	RULES .....	8
2.61	SECURITY INTEREST .....	8
2.62	SOLAR EQUIPMENT.....	8
2.63	SPECIAL ASSESSMENT .....	8
2.64	SPECIAL DECLARANT RIGHTS .....	8
2.65	STORAGE AREAS .....	8
2.66	SUCCESSOR DECLARANT.....	8
2.67	SUPPLEMENTAL DECLARATION .....	8
2.68	SUPPLEMENTAL MAP .....	8
2.69	TOWN.....	8
2.70	TOWN.....	8
2.71	UNAVOIDABLE DELAY .....	8
2.72	UNIT .....	8
2.73	UTILITIES .....	9
2.74	VOTING INTERESTS .....	9
ARTICLE 3 – CONDOMINIUM MAP .....		9
3.1	RECORDATION AND CONTENT .....	9
3.2	AMENDMENTS .....	9
ARTICLE 4 – DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP .....		10
4.1	CREATION OF CONDOMINIUM.....	10
4.1.1	General .....	10
4.1.2	Condominium Association.....	10
4.2	DESCRIPTION OF UNITS.....	10
4.3	ASSOCIATION .....	10
4.4	IDENTIFICATION OF UNITS .....	11
4.5	INSEPARABILITY OF UNITS .....	11
4.6	NON-PARTITIONABILITY OF COMMON ELEMENTS.....	11
4.7	COMBINATION OR SUBDIVISION.....	11
4.8	NO SUBDIVISION, COMBINATION OR EXPANSION .....	12
4.9	UNITS THAT MAY BE CREATED .....	12
ARTICLE 5 – OWNER’S PROPERTY RIGHTS IN COMMON ELEMENTS .....		12
5.1	RIGHT AND EASEMENT TO COMMON ELEMENTS .....	12
5.2	LIMITED COMMON ELEMENTS .....	13

5.2.1	Limited Common Elements .....	13
5.2.2	Utilities.....	13
5.2.3	Allocation of Other Limited Common Elements .....	14
5.2.4	Disassociation .....	14
5.3	GENERAL COMMON ELEMENTS .....	14
5.4	STORAGE AREAS .....	14
5.5	PARKING SPACES.....	15
ARTICLE 6 – ASSOCIATION .....		16
6.1	ASSOCIATION GENERAL PURPOSES AND POWERS .....	16
6.2	PERSONAL PROPERTY.....	17
6.3	BOARD.....	17
6.3.1	Number and Classification of Directors.....	17
6.3.2	Election of the Board .....	17
6.3.3	Powers of the Board.....	18
6.4	AGENCY WAIVER .....	19
6.5	ARTICLES OF INCORPORATION AND BYLAWS .....	19
6.6	COMMON ELEMENTS .....	19
6.7	MANAGING AGENT.....	20
6.8	WORKING CAPITAL FUND .....	20
6.9	BOOKS AND RECORDS .....	20
6.10	RULES .....	20
ARTICLE 7 – MEMBERSHIP AND VOTING RIGHTS .....		20
7.1	MEMBERSHIP IN THE ASSOCIATION .....	20
7.2	VOTING AND APPROVAL RIGHTS .....	21
7.3	TRANSFER OF MEMBERSHIP .....	21
ARTICLE 8 – EASEMENTS .....		21
8.1	RECORDED EASEMENTS .....	21
8.2	DECLARANT’S EASEMENT RIGHTS.....	21
8.3	ENCROACHMENT EASEMENTS.....	21
8.4	UTILITY EASEMENTS .....	22
8.5	SUPPORT EASEMENTS.....	22
8.6	ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.....	22
8.7	OWNERS’ EASEMENTS.....	23
8.8	EASEMENTS DEEMED APPURTENANT .....	23
8.9	EASEMENT FOR EXPANSION AREA.....	24
8.10	RESERVATION OF EASEMENTS, EXCEPTIONS AND EXCLUSIONS.....	24
8.11	ADDITIONAL EASEMENTS .....	24
ARTICLE 9 – ASSESSMENTS.....		24
9.1	ASSESSMENTS.....	24
9.2	ALLOCATION OF COMMON EXPENSES.....	25
9.2.1	General Common Expenses .....	25
9.2.2	General Expense Sharing Ratio.....	25
9.2.3	Common Expense Sharing Ratio .....	25
9.2.4	Limited Common Expenses .....	25
9.2.5	Limited Expense Sharing Ratios .....	26
9.2.6	Changes in Expense Sharing Ratios and Voting Interests.....	26
9.3	DETERMINATION OF VOTING INTERESTS .....	26

9.3.1	General Voting Interests .....	26
9.3.2	No Vote if Not in Good Standing .....	26
9.4	BUDGET .....	26
9.4.1	Budget .....	26
9.4.2	Approval by Owners .....	26
9.4.3	Reserve Fund.....	27
9.5	GENERAL ASSESSMENTS .....	27
9.6	DATE OF COMMENCEMENT OF GENERAL ASSESSMENTS.....	27
9.7	SPECIAL ASSESSMENTS .....	27
9.8	DEFAULT ASSESSMENTS .....	28
9.9	LIMITED COMMON EXPENSES .....	28
9.10	ASSESSMENTS/CHARGES FOR SERVICES TO LESS THAN ALL UNITS IN COMMUNITY .....	28
9.11	EFFECT OF NONPAYMENT: ASSESSMENT LIEN .....	28
9.12	FAILURE TO LEVY ASSESSMENT .....	29
9.13	STATEMENT OF STATUS OF ASSESSMENT PAYMENT .....	29
9.14	MAINTENANCE ACCOUNTS: ACCOUNTING .....	29
9.15	SEPARATE UNITS.....	30
ARTICLE 10 – INSURANCE.....		30
10.1	GENERAL INSURANCE PROVISIONS .....	30
10.2	CERTIFICATES OF INSURANCE; CANCELLATION .....	30
10.3	INSURANCE PROCEEDS .....	30
10.4	REPAIR AND REPLACEMENT OF COMMON ELEMENTS .....	31
10.5	HAZARD INSURANCE FOR THE COMMON ELEMENTS .....	31
10.6	COMMERCIAL LIABILITY FOR THE ASSOCIATION .....	32
10.7	ASSOCIATION INSURANCE REQUIREMENTS .....	32
10.8	OWNERS’ HAZARD INSURANCE .....	32
10.9	OWNERS’ LIABILITY INSURANCE .....	33
10.10	OWNERS’ FAILURE TO OBTAIN INSURANCE.....	33
10.11	FIDELITY INSURANCE .....	33
10.12	WORKER’S COMPENSATION INSURANCE .....	34
10.13	DIRECTORS AND OFFICERS LIABILITY INSURANCE.....	34
10.14	OTHER INSURANCE.....	34
10.15	COMMON EXPENSES .....	34
ARTICLE 11 – MAINTENANCE .....		34
11.1	MAINTENANCE BY OWNERS .....	34
11.2	OWNER’S FAILURE TO MAINTAIN OR REPAIR.....	35
11.3	MAINTENANCE BY ASSOCIATION .....	35
11.4	DECLARANT/CONTRACTOR INSPECTIONS .....	35
11.5	ASSOCIATION’S MAINTENANCE AS COMMON EXPENSES .....	36
11.6	LIMITED COMMON ELEMENT DAMAGE .....	36
11.7	OWNER’S NEGLIGENCE .....	36
11.8	BOARD CONSENT REQUIRED.....	36
11.9	UTILITIES FOR UNITS.....	36
ARTICLE 12 – MECHANIC’S LIENS .....		37
12.1	NO LIABILITY .....	37
12.2	INDEMNIFICATION .....	37
12.3	ASSOCIATION ACTION.....	37

ARTICLE 13 – RESTRICTIVE COVENANTS .....	37
13.1 COMPLIANCE WITH LAWS.....	37
13.2 COMPLIANCE WITH ASSOCIATION DOCUMENTS .....	37
13.3 VAIL DEED RESTRICTION.....	38
13.4 PROPERTY TO BE MAINTAINED .....	38
13.5 NO NUISANCES, OFFENSIVE, HAZARDOUS, OR ANNOYING ACTIVITIES .....	38
13.6 UTILITY SYSTEMS .....	38
13.7 RESIDENTIAL PURPOSES.....	38
13.8 DECLARANT’S USE.....	39
13.9 LEASING OF UNITS .....	39
13.10 USE OF COMMON ELEMENTS .....	39
13.11 PROHIBITION AGAINST TIMESHARING, HOUSE EXCHANGE AND RENTAL POOLS .....	40
13.12 RESTRICTIONS CONCERNING PARKING AND VEHICLES .....	40
13.12.1 Parking Spaces .....	40
13.12.2 Abandoned or Stored Vehicles.....	40
13.12.3 Right to Tow Vehicles .....	40
13.13 RULES AND REGULATIONS .....	41
13.13.1 Household Pets.....	41
13.13.2 Damage to Property.....	41
13.13.3 Rubbish, Trash and Garbage .....	41
13.13.4 Satellite Dishes.....	41
13.13.5 Life Safety Systems.....	42
13.13.6 American Flags, Service Flags and Political Signs .....	42
13.13.7 Noise.....	42
13.14 ADDITIONAL RESTRICTIONS.....	42
ARTICLE 14 – DAMAGE OR DESTRUCTION.....	42
14.1 ASSOCIATION AS ATTORNEY-IN-FACT .....	42
14.2 THE ROLE OF THE BOARD .....	42
14.3 ESTIMATE OF DAMAGES OR DESTRUCTION .....	43
14.4 REPAIR AND RECONSTRUCTION .....	43
14.5 DAMAGE OR DESTRUCTION TO UNITS .....	43
14.6 INSUFFICIENT INSURANCE PROCEEDS .....	43
14.7 ASSOCIATION REMEDIES .....	43
ARTICLE 15 – CONDEMNATION.....	44
15.1 RIGHTS OF OWNERS .....	44
15.2 PARTIAL CONDEMNATION; DISTRIBUTION OF AWARD: RECONSTRUCTION .....	44
15.3 COMPLETE CONDEMNATION .....	44
ARTICLE 16 – RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS .....	45
16.1 RESERVATION OF DEVELOPMENT RIGHTS .....	45
16.2 RESERVED DEVELOPMENT RIGHTS OF ANNEXATION AND EXPANSION .....	45
16.2.1 Amendments to Declaration and Map.....	45
16.2.2 Expansion of Definitions.....	45
16.2.3 Declaration Operative on Other Properly.....	45
16.2.4 Effect on Expansion .....	46
16.2.5 Right to Clarify .....	46
16.2.6 Withdrawal Right.....	46
16.3 RIGHT TO DESIGNATE SITES FOR GOVERNMENTAL AND PUBLIC INTERESTS .....	46
16.4 RIGHT TO APPROVE ADDITIONAL COVENANTS .....	46

16.5	RIGHT TO APPROVE CHANGES IN THE RESTRICTIONS AND RULES AND REGULATIONS .....	46
16.6	CHANGE IN EXPENSE SHARING RATIOS .....	47
16.7	TRADEMARKS .....	47
16.8	EQUAL TREATMENT .....	47
16.9	NO INTERFERENCE WITH DECLARANT’S RIGHTS .....	48
16.10	RIGHT TO USE COMMON AREA FOR SPECIAL EVENTS .....	48
16.11	EASEMENT TO INSPECT AND RIGHT TO CORRECT .....	48
16.12	RIGHT TO NOTICE OF DESIGN OR CONSTRUCTION CLAIMS .....	48
16.13	OTHER RESERVED RIGHTS .....	49
16.14	CHANGE IN EXPENSE SHARING RATIOS .....	49
16.15	TERMINATION OF RIGHTS.....	49
ARTICLE 17 – ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO COMMON ELEMENTS.....		50
17.1	ALTERATIONS, ADDITIONS OR IMPROVEMENTS.....	50
17.2	GOVERNMENTAL APPROVAL .....	50
17.3	ARCHITECTURAL CONTROL .....	50
17.3.1	Architectural Review .....	50
17.3.2	Approval of Additions or Modifications.....	50
17.3.3	Approval of Plans.....	51
17.3.4	Liability for Plans.....	51
17.4	SOLAR PANEL INSTALLATION .....	51
17.5	ASSOCIATION RIGHT TO REMOVE UNAUTHORIZED ALTERATIONS, ADDITIONS OR IMPROVEMENTS.....	52
ARTICLE 18 – MORTGAGEE’S RIGHTS.....		52
18.1	TITLE TAKEN BY FIRST MORTGAGEE.....	52
18.2	DISTRIBUTION OF INSURANCE OR CONDEMNATION PROCEEDS.....	52
18.3	RIGHT TO PAY TAXES AND CHARGES .....	52
18.4	FINANCIAL STATEMENT .....	52
18.5	NOTICE OF ACTION.....	52
18.6	ACTION BY MORTGAGEE.....	53
ARTICLE 19 – DURATION OF COVENANTS AND AMENDMENT.....		53
19.1	TERM .....	53
19.2	TERMINATION.....	53
19.3	AMENDMENT .....	54
19.4	EXECUTION OF AMENDMENT .....	55
ARTICLE 20 – INDEMNIFICATION.....		55
ARTICLE 21 – ENVIRONMENTAL PROVISIONS .....		55
ARTICLE 22– SPECIAL TAXING DISTRICT .....		56
ARTICLE 23 – OWNER ACKNOWLEDGEMENTS .....		56
23.1	DECKS (USE AND CONSTRUCTION) .....	56
23.2	NATURAL MATERIALS; CONCRETE, FLOORS, CABINETRY, GRANITE, TILE AND CEILINGS .....	56
23.3	NOISE TRANSMISSION .....	57
23.4	SMOKING .....	57

23.5	ROOF.....	57
23.6	NO VIEW EASEMENT.....	57
23.7	WALLS AND COLUMNS.....	57
23.8	WINDOWS.....	57
23.9	STORAGE AREAS.....	57
23.10	CONDENSATION/HUMIDITY.....	57
23.11	MOLD.....	58
23.12	SECURITY.....	58
ARTICLE 24 – GENERAL PROVISIONS .....		59
24.1	SUPPLEMENT TO APPLICABLE LAW .....	59
24.2	CONVEYANCE OF UNITS.....	59
24.3	ESTOPPEL CERTIFICATES.....	59
24.4	UNAVOIDABLE DELAY .....	60
24.5	RESTRICTION ON DECLARANT POWERS .....	60
24.6	DECLARANT’S USE.....	60
24.7	LIMITATION ON LIABILITY .....	60
24.8	NO REPRESENTATIONS, GUARANTIES OR WARRANTIES.....	60
24.9	DISCLAIMER REGARDING SAFETY .....	61
24.10	WAIVER.....	61
24.11	ENFORCEMENT AND RIGHTS OF ACTION.....	61
	24.11.1 Enforcement.....	61
	24.11.2 Scope of Association Rights .....	61
24.12	DISPUTE RESOLUTION .....	62
24.13	NOTICES .....	67
24.14	SEVERABILITY .....	68
24.15	NUMBER AND GENDER.....	68
24.16	CONFLICTS BETWEEN DOCUMENTS .....	68
24.17	DECLARANT’S OWNERSHIP OF UNSOLD UNITS .....	68
24.18	COUNTERPARTS.....	68

## EXHIBIT LIST

<b>Exhibit A</b>	Legal Description of the Property
<b>Exhibit B</b>	General Expense Sharing Ratios and Voting Interests
<b>Exhibit C</b>	Recorded Easements affecting the Property
<b>Exhibit D</b>	Allocation of Storage Areas
<b>Exhibit E</b>	Allocation of Parking Spaces



**CONDOMINIUM DECLARATION  
OF  
TIMBER RIDGE VILLAGE**

This CONDOMINIUM DECLARATION OF TIMBER RIDGE VILLAGE (this “**Declaration**”) is made as of \_\_\_\_\_, 2024, by **TRIUMPHTIMBER RIDGE, LLC**, a Delaware limited liability company (the “**Declarant**”).

**RECITALS**

A. Declarant is record owner of that certain real property located in the Town of Vail and County of Eagle, Colorado, more particularly described on the attached Exhibit A and incorporated herein by reference (the “**Property**”).

B. Declarant has constructed the initial phase of a condominium common interest community (the “**Community**”) on the Property, and Declarant desires to convert the ownership of the units comprising the Community and the improvements hereafter constructed on the Property in connection with such Community to the condominium form of ownership pursuant to the Act (as defined below), as such Act may be amended from time to time.

C. By this Declaration, a plan is established for the separate fee simple ownership of the Units by the Owners thereof and ownership of certain Common Elements (as all of those capitalized terms are defined below) as tenants-in-common.

D. The name of the Community is “Timber Ridge Village.”

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements, all of which shall run with the land and be binding upon all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property.

**ARTICLE 2  
DEFINITIONS**

The following words, when used in this Declaration or any Supplemental Declaration, shall have the following meanings:

2.1 “**Act**” shall mean the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes §38-33.3-101, *et seq.*, as the same may be amended from time to time. In the event that the Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

2.2 “**Agency**” shall mean any agency or corporation that purchases, insures or guarantees residential mortgages, including the United States Housing and Urban Development (HUD), the United

States Department of Veterans Affairs (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC) and the Colorado Housing and Finance Authority.

2.3 “**Allocated Interests**” shall mean with respect to any Unit, the interest in all Limited Common Elements allocated for the exclusive use and benefit of the Unit, the undivided interest in all other Limited Common Elements serving the Unit as allocated in this Declaration, the undivided interest in all General Common Elements as allocated in this Declaration, and the Voting Interest allocated to the Unit. All undivided interests in Common Elements are allocated according to the Expense Sharing Ratios applicable to the relevant Common Element among Owners pursuant to this Declaration and are subject to change as provided in this Declaration.

2.4 “**Articles**” shall mean the Articles of Incorporation for the Association on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.5 “**Assessments**” shall mean the General Assessments, Special Assessments and Default Assessments levied pursuant to Article 9 below.

2.6 “**Association**” shall mean Timber Ridge Village Owners’ Association, Inc., a Colorado nonprofit corporation, and its successors and assigns. The Association shall act by and through its Board and officers unless the Articles, Bylaws or this Declaration specifically require otherwise.

2.7 “**Association Documents**” shall mean this Declaration, the Articles, the Bylaws, the Map, the Design Guidelines, if any, the Rules, the Policies, and any other procedures, rules, regulations or policies adopted by the Association.

2.8 “**Association-Insured Property**” is defined in Section 14.2.

2.9 “**Board**” or “**Board of Directors**” shall mean the Board of Directors of the Association.

2.10 “**Budget**” shall mean an annual written itemized estimate of the expenses to be incurred by the Association in performing its functions pursuant to this Declaration, prepared in accordance with Section 9.4.

2.11 “**Building**” or “**Buildings**” shall mean and refer to each building located on and constituting a part of the Project. There are four Buildings located within the Project, which are designated as follows: Building A, Building B, Building C, and Building D.

2.12 “**Bylaws**” shall mean the Bylaws adopted by the Association, as the same may be amended from time to time.

2.13 “**Clerk and Recorder**” shall mean the office of the Clerk and Recorder in Eagle County, Colorado.

2.14 “**Common Elements**” shall mean both General Common Elements and Limited Common Elements and shall consist of all portions of the Project except (a) the Units (which exception includes Improvements within the Units, unless such Improvements are specifically designated in this

Declaration or on the Map as a Common Element) and (b) that portion of the Project depicted on the Map (including supplemental filings thereof) as “Expansion Area.” Declarant may complete the construction of the Project in phases. Declarant will file at the completion of each phase an amendment to the Map describing the area and improvements included with that phase and identifying the portion of the Property remaining to be developed within the Project, if any.

2.15 “**Common Expense Sharing Ratio**” is defined in Section 9.2.3 below.

2.16 “**Common Expenses**” shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws; (b) all other expenses of owning, administering, operating, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (c) all expenses incurred for the benefit of more than one Owner; (d) insurance premiums and deductibles for the insurance carried pursuant to Article 10; and (e) all expenses lawfully determined to be Common Expenses by the Board. The Common Expenses shall consist of General Common Expenses and various types of Limited Common Expenses.

2.17 “**Contractor**” means that company, or those companies, engaged to construct the Buildings and the Units within the Building as general contractor or construction manager.

2.18 “**County**” shall mean Eagle County, Colorado.

2.19 “**Declarant**” shall mean TRIUMPHTIMBER RIDGE, LLC, a Delaware limited liability company. References in this Declaration to “Declarant” shall mean and include all Successor Declarant(s) to the extent of the rights of Declarant duly assigned and conveyed by Declarant (or its Successor Declarant) to each such Successor Declarant.

2.20 “**Declaration**” shall mean this Declaration and the Map, and amendments and supplements to the foregoing.

2.21 “**Development Rights**” shall mean and refer to those rights defined as “Development Rights” in Section 103(14) of the Act that are reserved for the benefit of the Declarant in accordance with the specific terms and conditions of this Declaration, including the following rights:

(a) to create Units or Common Elements within the Project in accordance with Sections 16.1 and 16.2 below; and

(b) to subdivide Units or convert Units into Common Elements in accordance with Section 16.1 below.

2.22 “**Design Guidelines**” is defined in Section 17.3.1 below.

2.23 “**Environmental Law**” shall mean any federal, state or local law, whether common law, court or administrative decision, statute, rule, regulation, ordinance, court order or decree, or administrative order or any administrative policy or guideline concerning action levels of a governmental authority (federal, state or local) relating to the environment, public health, occupational safety, industrial hygiene, any Hazardous Materials (including the disposal, generation, manufacture,

presence, processing, production, release, storage, transportation, treatment, or use thereof), or the environmental conditions on, under, or about the Property, as amended and as in effect from time to time, including the following statutes and all regulations thereunder as amended and in effect from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et. seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. §§ 11001, *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401, *et. seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 3251 *et. seq.*, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801, *et. seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901, *et. seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et. seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, *et. seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, *et. seq.*; and any successor statutes to, and regulations regarding, the foregoing.

2.24 “**Estoppel Certificate**” is defined in Section 23.3 below.

2.25 “**Expansion Area**” shall mean that portion of the Property depicted on the Map as “Expansion Area” or otherwise reserved for future development by Declarant.

2.26 “**Expense Sharing Ratios**” shall mean the General Expense Sharing Ratio as set forth in Exhibit B, the Common Expense Sharing Ratio, and any Limited Expense Sharing Ratios. The formulas for determining the respective Expense Sharing Ratios are set forth in Section 9.2 below.

2.27 “**First Mortgage**” shall mean a Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

2.28 “**First Mortgagee**” shall mean any person named as a Mortgagee in any First Mortgage when the holder has notified the Association, in writing, of its name and address and that it holds a First Mortgage on a Unit. The notice must include the address of the Unit regarding which the holder has a First Mortgage.

2.29 “**General Assessment**” shall mean the Assessment levied pursuant to the annual Budget as provided in Section 9.5.

2.30 “**General Common Elements**” are all tangible physical properties of this Project, other than Limited Common Elements and the Units. The General Common Elements include those Utilities identified as General Common Elements in Section 5.2.2 below and the following, to the extent not otherwise designated on the Map or in this Declaration as a Limited Common Element: (a) land, retaining walls, trash enclosure, park, and landscaping within the Project; (b) all easements and off-site entitlements included with or running for the benefit of the Property (whether in title or by contract), if any; (c) all sidewalks located on the Property (or any portion thereof), if any; (d) management offices, engineering office and group facilities, if any; (e) driveways and lanes to the Units and Parking Spaces; (f) parking spaces not otherwise allocated on the Map or in this Declaration as a Limited Common Element; (g) mechanical and equipment rooms designated on the Map as a General Common Element, if any; (h) all monument or directional signage, if any, mail boxes and stands, irrigation systems for the Project, and all exterior lighting located within the Project; (i) the roofs, exterior walls and main or bearing walls of or within the Buildings, exterior water hose bibs on each Building and the first floor on each Building that is used exclusively for parking; (j) the main or

bearing subflooring of the Buildings; (k) foundations, columns, girders, beams and supporting elements of the Buildings; (l) Solar Equipment installed throughout the Project; (m) roof top decks and amenity rooms located throughout the Project; (n) those items identified on the Map as “GCE” or General Common Elements; and (o) those parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

2.31 “**General Common Expenses**” shall mean all Common Expenses other than Limited Common Expenses, including all Common Expenses incurred in connection with the ownership, administration, operation, management and Repair Work for the General Common Elements and those expenses identified in Section 9.2.1 below.

2.32 “**General Expense Sharing Ratio**” is defined in Section 9.2.2 below.

2.33 “**Good Standing**” shall mean that an Owner is not late in the payment any Assessments, and otherwise has none of his, her or its membership privileges suspended.

2.34 “**Gross Floor Area**” shall mean the sum of the gross horizontal areas of the floors of a Unit. All horizontal dimensions of each floor are to be measured from the unfinished interior surface of the walls (inside of the studs, back of drywall) of a building, to the center line of party walls and to the unfinished interior surface of any walls abutting exit or service corridors. In computing Gross Floor Area there shall be excluded the following: (a) any floor area devoted to mechanical equipment serving the building; (b) any floor area in a story the ceiling of which is less than four feet above grade at the nearest building line; (c) any floor area used exclusively as parking space for motor vehicles or for the storage of bicycles; (d) any floor area the ceiling of which is not greater than six feet; and (e) any floor area that is designated as a Common Element.

2.35 “**Hazard Insurance**” is defined in Section 10.5.

2.36 “**Hazardous Materials**” shall mean: (a) any chemicals, materials, or substances defined as, or included in, the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants” or words of similar import pursuant to any applicable Environmental Law; and (b) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any governmental authority, including asbestos and asbestos-containing materials in any form, lead-based paint, any radioactive materials, polychlorinated biphenyls (“PCBs”), or substances or compounds containing PCBs or petroleum products.

2.37 “**Improvements**” shall mean all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include all Buildings, outbuildings, patios, patio covers, awnings, Solar Equipment, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, driveways, screening walls, retaining walls, stairs, decks, balconies, trash enclosures, park improvements, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, utilities facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any.

2.38 “**Including**” or “**include**” or similar words, whether capitalized or not, shall mean *including, without limitation*.

2.39 “**Liability Insurance**” is defined in Section 10.6.

2.40 “**Limited Common Elements**” are all tangible physical properties of this Project, other than General Common Elements and the Units, including those items identified in: (a) Section 5.2.1; and (b) the Map or this Declaration as an “LCE” or a Limited Common Element. Limited Common Elements shall be reserved for the exclusive use of an Owner of a Unit or for the common use of more than one, but fewer than all, Owners.

2.41 “**Limited Common Expenses**” are those Common Expenses identified as such in this Declaration and those Common Expenses that are incurred in connection with the ownership, administration, operation, management, and Repair Work of the Limited Common Elements, including those described in Section 9.2.4 below.

2.42 “**Limited Expense Sharing Ratio**” is defined in Section 9.2.5 below.

2.43 “**Managing Agent**” shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association as the Board may authorize from time to time.

2.44 “**Map**” shall mean the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevations of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map and any supplements thereto are hereby incorporated herein by reference as if set forth in their entirety.

2.45 “**Member**” shall mean any person or entity that holds membership in the Association.

2.46 “**Mortgage**” shall mean any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.47 “**Mortgagee**” shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person or entity pursuant to such Mortgage.

2.48 “**Nonprofit Act**” shall mean the Colorado Revised Nonprofit Corporation Act, as set forth in Colorado Revised Statutes §§ 7-121-101 *et seq.*, as the same may be amended from time to time.

2.49 “**Owner**” shall mean the owner of record, whether one or more persons or entities, of fee simple title in and to any Unit, and “Owner” also includes the purchaser pursuant to a recorded contract for deed related to a Unit with a current right of possession and interest in the Unit.

2.50 “**Owner Maintenance Manual**” means and refers to that information package provided to each Owner in connection with the first acquisition of each Unit and to the Association by the Contractor or Declarant entitled “Timber Ridge Village Homeowner’s Care & Warranty Manual” dated \_\_\_\_\_, 20\_\_, as amended from time to time by Contractor or Declarant.

2.51 “**Parking Spaces**” is defined in Section 5.5.1 below.

2.52 “**Period of Declarant Control**” shall begin with the appointment of the initial Board and continue until the earliest of: (a) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; (b) two years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two years after the right to add new Units was last exercised.

2.53 “**Permittees**” shall mean and include an Owner’s family, tenants, sub-tenants, contractors, subcontractors, agents, employees, guests, licensees, and invitees and their respective officers, directors, members, managers, contractors, subcontractors, agents, employees, guests, licensees and invitees.

2.54 “**Plans**” shall mean plans and specifications showing the nature, kind, scope, materials, dimensions, locations and engineering aspects of any additions or modifications proposed by any Owner in accordance with subsection 17.3.2.

2.55 “**Policies**” shall mean the responsible governance policies of the Association adopted by the Board as required by the Act.

2.56 “**Project**” shall mean the Community created by this Declaration and as shown on the Map consisting of the Property, the Buildings, the Units and the Common Elements.

2.57 “**Project Maintenance Manual**” means and refers to that information package provided to the Association by the Contractor or Declarant entitled “Timber Ridge Village Project O&M Manual” dated \_\_\_\_\_, 202\_, as amended from time to time by Contractor or Declarant.

2.58 “**Repair Work**” shall mean all maintenance, repair, and replacement work, including costs of plans and specifications, inspections, supervision and other related costs. All Repair Work performed by the Association shall be performed as specified in the Project Maintenance Manual or, if not addressed in the Project Maintenance Manual, as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. All Repair Work performed by an Owner shall be performed as specified in the Owner Maintenance Manual or, if not addressed in the Owner Maintenance Manual, and as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition.

2.59 “**Requisite Percentage of Owners and First Mortgagees**” shall mean: (a) Owners of Units owning, in the aggregate, Units to which are appurtenant at least sixty-seven percent (67%) of those Voting Interests allocated to Units (as determined pursuant to Section 9.3.1); and (b) First Mortgagees, if any, that hold First Mortgages encumbering Units to which are appurtenant at least fifty-one percent (51%) of the Voting Interests of all Units encumbered by First Mortgages.

2.60 “**Rules**” shall mean the rules and regulations of the Association that govern the use of the Units, Common Elements and any property owned or managed by the Association, as created and amended from time to time by the Board.

2.61 “**Security Interest**” shall mean an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a lien created by a Mortgage, 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 total retention contract intended as security for an obligation.

2.62 “**Solar Equipment**” is defined in Section 17.4.

2.63 “**Special Assessment**” is defined in Section 9.7.

2.64 “**Special Declarant Rights**” shall mean the Development Rights and other rights expressly reserved for the benefit of Declarant in accordance with the specific terms and conditions of this Declaration.

2.65 “**Storage Areas**” is defined in Section 5.4.1.

2.66 “**Successor Declarant**” shall mean any person or entity to whom Declarant assigns any portion or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder. Declarant may assign less than all of its rights as Declarant to more than one Successor Declarant.

2.67 “**Supplemental Declaration**” shall mean an instrument that amends and/or restates this Declaration.

2.68 “**Supplemental Map**” shall mean a supplemental Map of the Project that depicts any change in the Project through a Supplemental Declaration.

2.69 “**Town**” shall mean the Town of Vail, Colorado.

2.70 “**Transit Unit**” shall mean that certain Unit shown on the Community Map as the Transit Unit, which Unit is to be used as a transit facility. No other uses of the Transit Unit shall be permitted.

2.71 “**Unavoidable Delay**” shall mean and include non-performance caused by fire or other casualty, national emergency, federal, state, or local governmental laws or regulations, war, civil commotion, strikes, lockouts, shortage or inability to obtain labor or materials, delay by governmental entity in the issuance of approvals of permits, epidemics, pandemics, acts of God, or other similar causes beyond the reasonable control of an Owner.

2.72 “**Unit**” shall mean the fee simple interest and title in and to an individual airspace that is contained within the unfinished interior surfaces of perimeter walls (*i.e.*, “studs in”), including, without limitation, those Utilities defined as part of a Unit pursuant to Section 5.2.2 below and all



spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Units; provided, however, that structural components (including concrete columns and pillars), that may constitute part of surrounding walls or columns, are nonetheless Limited Common Elements. In walls that separate one Unit from an adjoining Unit, the location of the vertical plane of the centerline of the divider wall shown on the Map shall be the common boundary between the adjoining Units. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units that share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Each Unit shall constitute a “unit” pursuant to the Act.

2.73 “*Utilities*” shall mean and include private and public utility lines, machinery or equipment of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sanitary sewer, storm sewer, chilled water, condenser water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity, solar generation, security, fire alarm, emergency communications, systems control and automation, video monitoring, telephone, television, radio, high speed internet/intranet, other telecommunications systems, and other mechanical, electrical, and related life safety systems.

2.74 “*Voting Interests*” is defined in Section 9.3.1 below.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meaning specified or used in the Act.

### **ARTICLE 3 CONDOMINIUM MAP**

3.1 **RECORDATION AND CONTENT.** Prior to the conveyance of any Unit, the Map shall be filed for record with the Clerk and Recorder. The Map may be filed in whole or in part or in parts or sections, from time to time and may be amended from time to time as provided in this Declaration. There shall be filed for record as a part of the Map the certificate of a registered land surveyor certifying that: (a) the Map substantially depicts the location and the horizontal and vertical boundaries of the Units to which it pertains; (b) such Map was prepared subsequent to substantial completion of the depicted Improvements; and (c) the Map contains all the information that is required by Section 209 of the Act. In interpreting the Map, the existing physical boundaries of each Unit, as constructed, shall be conclusively presumed to be its legal boundaries.

3.2 **AMENDMENTS.** Except as otherwise provided herein, the Map may be amended or supplemented with the prior written approval of: (a) sixty-seven percent (67%) of the Voting Interests; and (b) any First Mortgagee whose lien encumbers any portion of a Unit included in the proposed amendment or supplement. In addition, subject to Section 16.15, the Association or Declarant shall be entitled to amend or supplement the Map without the approval of Owners not owning affected Units: (a) for the subdivision or combination of Units as permitted in this Declaration; (b) to conform the Map to the actual location of constructed Improvements; (c) to, subject to the provisions of this Declaration, establish, vacate, and relocate easements of any kind; and (d) as may otherwise be permitted by this Declaration or the Act.

**ARTICLE 4**  
**DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP**

**4.1 CREATION OF CONDOMINIUM.**

4.1.1 *General.* Declarant hereby submits the Project to common interest ownership. The Project shall be deemed a “condominium,” as defined in the Act. The name of the Project is “*Timber Ridge Village.*”

4.1.2 *Condominium Association.* The Association shall serve as the condominium association for the Community in accordance with this Declaration.

**4.2 DESCRIPTION OF UNITS.**

4.2.1 Subject to Declarant’s Special Declarant Rights, including Development Rights, provided in Article 16 hereof, the Project is currently designed to be composed of two hundred ninety-four (294) Units as designated on the Map. Each Unit shall consist of a separate fee simple estate in a separately designated Unit. There shall pass with each Unit as appurtenances thereto the Allocated Interests appurtenant to that Unit and any other appurtenances as may be provided in this Declaration or the Act. Title in and to Units may be held in any form of ownership recognized in Colorado. In case of any concurrent, joint, or fractional ownership, each co-Owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Unit in which he/she/it owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree between/among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Unit in which they own an interest.

4.2.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit shall describe such Unit by its identifying letter and number as designated on the Map, followed by the name of the Project with further reference to this Declaration and the Map, and shall be substantially in the following form:

Unit \_\_\_\_, Timber Ridge Village, according to the Condominium Declaration thereof recorded on \_\_\_\_, 2024, at Reception No. \_\_\_\_ and the Condominium Map thereof recorded on \_\_\_\_, 2024, at Reception No. \_\_\_\_ in the records of the Clerk and Recorder of the County of Eagle, State of Colorado, as amended from time to time.

Such description shall be good and sufficient for all purposes to sell, convey, transfer encumber or otherwise affect the Unit. The reference to this Declaration and the Map in any instrument shall be deemed to include any recorded supplements or amendments thereto.

4.3 **ASSOCIATION.** The name of the Association is “Timber Ridge Village Owners’ Association, Inc.” Declarant has caused the Association to be incorporated as a non-profit corporation in accordance with the laws of the State of Colorado.

4.4 **IDENTIFICATION OF UNITS.** The identifying letter and number of each Unit is shown on the Map. The letter references the Building of which the Unit is a part.

4.5 **INSEPARABILITY OF UNITS.** Each Unit is inseparable and may be conveyed, leased, devised, or encumbered only as a single Unit. Each conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all related Allocated Interests and all other appurtenant rights, interests, duties and obligations created by law or by this Declaration.

4.6 **NON-PARTITIONABILITY OF COMMON ELEMENTS.** All Common Elements shall be owned in common by the Owners as provided in this Declaration and shall remain undivided, and no Owner or other person having an interest in a Unit may bring any action for partition or division of any of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives its right to maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and the provisions of this Section 4.6 may be pled as a bar to the maintenance of any such action. Any Owner who commences such action shall be liable to the Association for all of its costs, expenses and reasonable attorneys' fees incurred in defending such action. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in Common Elements without the Unit to which that interest is allocated shall be void.

4.7 **COMBINATION OR SUBDIVISION.** In order to combine or subdivide any Units, the Owners (other than Declarant as to its right to subdivide or combine Units without Board approval), shall submit an application to the Board, which shall include: (a) evidence that the proposed combination or subdivision of one or more Units complies with all building codes, fire codes, zoning codes, and other applicable ordinances adopted and enforced by the Town and the State of Colorado (however, such application need not include any required governmental approval that is subject to first obtaining Board approval, but such application must condition Board approval upon obtaining any such required governmental approval prior to commencing the requested action); (b) the proposed reallocation or recalculation of the Expense Sharing Ratios; (c) the proposed form of amendments to this Declaration and the Map, as may be necessary to show the Unit or Units that are created by the combination or subdivision of a Unit or Units and their dimensions and identifying numbers; (d) a deposit for fees (including attorneys' fees) and costs that the Association may incur in reviewing and effectuating the combination or subdivision, in an amount reasonably estimated by the Board; (e) a statement that the proposed combination or subdivision does not violate the terms of any Mortgage encumbering the Unit or Units; and (f) such other information requested by the Board. All costs and fees of combining, subdividing or re-subdividing any Units, including all costs and fees incurred by the Association in reviewing the request (including any attorneys' or other consultants' fees), shall be borne by the applicant. In any case in which the Board's approval is required, the Board shall be entitled to deny any request for combination or subdivision of Units on the basis that: (y) the combination or subdivision adversely impacts the maintenance or insurance responsibilities of the Association; or (z) for any other reason whereby the combination or subdivision adversely impacts the Project or the Association. Upon exercising any right to combine or subdivide Units, Declarant (in the case of a subdivision or combination by Declarant), or the Association shall record an amendment to this Declaration and the Map reflecting any changes resulting from the exercise of such right, sufficient to satisfy the requirements of the Map and deliver a copy thereof to each Owner.

4.8 **NO SUBDIVISION, COMBINATION OR EXPANSION.** Except as expressly provided in this Article 4 and except for Declarant's Special Declarant Rights, including Development Rights, as provided in Article 16, no portion of the Project (including the Common Elements) shall be subject to an action for division and no Units shall be subdivided, combined or expanded.

4.9 **UNITS THAT MAY BE CREATED.** The number of Units that may be created in the initial phase of development of the Project is forty (40) Units. Upon full exercise of Declarant's Reserved Development and Special Declarant Rights, the maximum number of Units that may be created in the Project is four hundred (400) Units.

## **ARTICLE 5 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS**

5.1 **RIGHT AND EASEMENT TO COMMON ELEMENTS.** Every Owner and its Permittees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements allocated to such Owner's Unit (whether separately or together with other Units), plus a right and easement of ingress and egress over, across, and upon the General Common Elements for the purpose of entering and exiting such Owner's Unit and Limited Common Elements from and to any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to, and pass with, the transfer of title to, the Owner's Unit and shall be perpetual and indefeasible; provided, however, that such rights and easements shall be subject to the following:

(a) the terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations now or subsequently contained in this Declaration and the Map;

(b) the right of the Association to suspend the voting rights and any and all other rights of any Owner or such Owner's Permittees to the use of any facilities within the Project for: (i) any period during which any Assessment against such Owner or against such Owner's Unit shall remain unpaid and past due; and (ii) any period of time that the Association may reasonably deem appropriate in connection with an infraction of any requirement of any of the Association Documents by an Owner or its Permittees;

(c) the right of the Association to adopt, from time to time, Rules concerning the Units, Common Elements or any property managed by the Association, and any facilities located thereon and the use thereof, as the Association may reasonably determine is necessary or prudent, subject, however, to the restrictions set forth in Section 6.10 hereof;

(d) the right of the Association to grant licenses and leases for the use and enjoyment of the Common Elements to the extent that the same do not unreasonably interfere with use of the General Common Elements and Limited Common Elements by the Owners of Units to which they are allocated;

(e) the right of the Association and Declarant (subject to limitation on the duration of Declarant's Special Declarant Rights set forth in Section 16.15 below) to grant permits, licenses and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, which do not unreasonably interfere with use

of the General Common Elements and Limited Common Elements by the Owners of Units to which they are allocated; and

(f) the right of an Owner or the Owners of any Unit or Units to which a Limited Common Element is allocated to designate a reasonable location of any easement across such Limited Common Element, provided that such location does not undermine the purpose of such easement.

## 5.2 LIMITED COMMON ELEMENTS.

5.2.1 *Limited Common Elements.* The Limited Common Elements include the following:

- (a) equipment rooms depicted on the Map that are allocated for the exclusive use of more than one, but less than all of the Units;
- (b) those Utilities defined as such in Section 5.2.2 below;
- (c) Parking Spaces allocated for the exclusive use of each Unit as depicted on the Map;
- (d) decks, balconies and patios allocated for the exclusive use of each Unit as depicted on the Map;
- (e) shutters, awnings, window boxes, windows, doors, entrances, exits and walkways that are for the exclusive use of less than all of the Units;
- (f) any portion of a chute, flue, duct, wire, conduit, or other fixture that lies partially within and partially outside the designated boundaries of a Unit that serves one or more (but not all) Units; and
- (g) with respect to all Buildings, each of the following, as they relate to a particular Building, shall be for the exclusive use of those Owners who own Unit(s) in said particular Building, and are thereby allocated to each Owner within the relevant Building on a percentage basis equivalent to a fraction, the numerator of which shall be the number of Units owned by an Owner in a particular Building and the denominator of which shall be the total number of Units in the Building:
  - (i) the riser, water and other utility rooms located within each Building.

Nonstructural walls located wholly within a Unit are considered parts of the Units in which they are located and not Common Elements.

5.2.2 *Utilities.* Utilities are categorized by this Declaration as General Common Elements, Limited Common Elements or parts of Units. Utilities that serve only one Unit and are located wholly within such Unit are part of the Unit served. Utilities that serve only one Unit but are not located wholly within such Unit are Limited Common Elements allocated to the Unit served. Utilities that serve more than one but less than all Units are Limited Common Elements allocated to the Units served. Utilities that serve all Units are General Common Elements allocated to all of the Units.

5.2.3 *Allocation of Other Limited Common Elements.* Limited Common Elements that are limited to, reserved for, or that serve only a single Unit are allocated to that Unit. Limited Common Elements that are limited to, reserved for, or serve more than one, but less than all, of the Units and that are otherwise not allocated by the provisions of this Declaration are allocated to those Units served.

5.2.4 *No Disassociation.* Except as otherwise provided in this Declaration, Limited Common Elements shall not be disassociated from a Unit to which they are allocated by the Declarant, the Association or any Owner, and no reference thereto shall be required to be made in any deed, Mortgage, instrument of conveyance, or other instrument describing such Unit.

5.3 **GENERAL COMMON ELEMENTS.** Each Owner of a Unit owns an undivided interest and has a non-exclusive right to use the General Common Elements without hindering or encroaching upon the lawful rights of other Owners and in accordance with the Rules and Policies. Subject to Declarant's proper exercise of Special Declarant Rights, without the prior written approval of the Requisite Percentage of Owners and First Mortgagees, no General Common Element may be abandoned, partitioned, subdivided, encumbered, sold or transferred; provided, however, that: (a) easements may be granted by Declarant or the Association over General Common Elements for public or private Utilities or for other public purposes consistent with the intended use of the General Common Elements; and (b) leases and licenses to use the General Common Elements may be granted by the Association to Owners or others on arms-length terms and for commercially-reasonable consideration, without such approval being required. No reference to General Common Elements shall be required to be made in any deed, Mortgage, instrument of conveyance or other instrument describing the Unit. Except as otherwise provided herein, the operation and Repair Work for General Common Elements shall be the responsibility of the Association and the cost thereof is a General Common Expense.

#### 5.4 **STORAGE AREAS.**

5.4.1 Certain Units may be allocated a storage space (each a "***Storage Area***"). Storage Areas are located on the podium level of each Building and have been or will be allocated as Limited Common Elements to Units by Declarant. Storage Areas are depicted on the Map as "SA - \_\_\_\_\_" with reference to the applicable Building letter and number (e.g., SA-A1). Each Storage Area is or will be allocated for the exclusive use and benefit of a Unit Owner as indicated on Exhibit D attached hereto. Each Storage Area shall be a Limited Common Element allocated to such Unit and may not be assigned or transferred apart from that Unit. Any subsequent sale or conveyance of the Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the assigned Storage Area and shall cause the exclusive right to use such assigned Storage Area to vest in the purchaser of the selling Owner's Unit. Storage Areas may be reallocated among the Units with the consent of the Association, the Owner, and First Mortgagee of each Unit whose Storage Area assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act.

5.4.2 Storage Areas shall be used solely for the purpose of storing personal property belonging to the Owner or Permittee of the Unit to which such Storage Area is allocated as a Limited Common Element. Each Owner shall be responsible for maintaining the Storage Area allocated to such Owner's Unit in a slightly condition, clean and free from debris of any kind. No Owner or Permittee shall store any explosives or any flammable, odorous, noxious, corrosive, hazardous or

pollutant materials or any other goods in the Storage Area that would cause danger or nuisance to the storage areas within the Project. The Storage Areas shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code or health code. If hazardous substances are stored, used, generated or disposed of on or in the Storage Area or if the Storage Area becomes contaminated in any manner for which the Owner or Permittee is legally liable, the Owner or Permittee shall indemnify and hold harmless Declarant, Association and the Board from any and all claims, damages, fines, judgments, penalties, costs, liabilities and losses and any sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of such contamination.

5.4.3 Notwithstanding any provisions in Section 5.4.1 to the contrary, Declarant may, as part of its Development Rights and other Special Declarant Rights, reallocate Storage Area(s) among Units owned by Declarant in any manner desired by Declarant, prior to the sale of such Units to their initial Owners (other than Declarant or its First Mortgagee), and may amend this Declaration or the Map accordingly, all without the consent of the Association, the Board, any First Mortgagees, or any other person. Declarant's Development Rights and other Special Declarant Rights set forth in this Section 5.4.3 shall terminate on the first to occur of the twentieth anniversary of the date this Declaration is recorded or the date of conveyance of the last Unit by Declarant to the first purchaser thereof (other than Declarant or its First Mortgagee). At such time, any Storage Areas that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements to be operated and managed by the Association. Notwithstanding the provisions of this Section 5.4.3, Declarant's right to reallocate Storage Areas will not apply to Storage Areas specifically identified in any executed purchase agreement for sale of a Unit, without the prior consent of the contract purchaser.

## 5.5 **PARKING SPACES.**

5.5.1 Units may be allocated one or more parking spaces (each a "***Parking Space***"). Parking Spaces are located throughout the Project and have been or will be allocated as Limited Common Elements to Units by Declarant. Parking Spaces are depicted on the Map as "PS \_\_\_\_" and numbered from 1 through 332. Each Parking Space is or will be allocated for the exclusive use and benefit of a Unit Owner or otherwise designated as a General Common Element as indicated on Exhibit E attached hereto. Each Parking Space that is allocated for the benefit of a Unit Owner shall be a Limited Common Element allocated to such Unit and may not be assigned or transferred apart from that Unit. Any subsequent sale or conveyance of the Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the assigned Parking Space and shall cause the exclusive right to use such assigned Parking Space to vest in the purchaser of the selling Owner's Unit. Parking Spaces may be reallocated among the Units with the consent of the Association, the Owner, and First Mortgagee of each Unit whose Parking Space assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act.

5.5.2 Notwithstanding any provisions in Section 5.5.1 to the contrary, Declarant may, as part of its Development Rights and other Special Declarant Rights, reallocate Parking Space(s) among Units owned by Declarant in any manner desired by Declarant, prior to the sale of such Units to their initial Owners (other than Declarant or its First Mortgagee), and may amend this Declaration or the Map accordingly, all without the consent of the Association, the Board, any First Mortgagees, or any other person but subject to obtaining any required approvals from the Town. Declarant's Development Rights and other Special Declarant Rights set forth in this Section 5.5.2 shall terminate on the first to occur of the twentieth anniversary of the date this Declaration is recorded or the date of

conveyance of the last Unit by Declarant to the first purchaser thereof (other than Declarant or its First Mortgagee). At such time, any Parking Spaces that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements to be operated and managed by the Association. Notwithstanding the provisions of this Section 5.5.2, Declarant's right to reallocate Parking Spaces will not apply to Parking Spaces specifically identified in any executed purchase agreement for sale of a Unit, without the prior consent of the contract purchaser.

5.5.3 In addition to Parking Spaces that are allocated for the exclusive use of Unit Owners, there are approximately thirty-eight (38) parking spaces located throughout the Community that are General Common Elements and are intended to be available for use by guests of Unit Owners to the Community. Use of these General Common Element parking spaces shall be subject to additional requirements as set forth in the Rules.

5.5.4 Notwithstanding anything to the contrary stated herein, with respect to any handicap Parking Spaces shown on the Map as "HC" or shown as "handicap" or "disabled" parking by way of a symbol ("**Handicap Spaces**"), such Handicap Spaces shall be sold subject to the rights of Declarant (for so long as Declarant owns a Unit primarily for the purposes of sale or lease) or the Association (at such time when Declarant no longer owns a Unit primarily for the purposes of sale or lease) requiring the Owner of such Handicap Space (hereinafter, the "**Original Owner**") to grant a license to use such Handicap Space to another Owner (hereinafter, the "**Disabled Owner**"), provided that (a) the Disabled Owner (or his or her occupant) qualifies under applicable laws to use a handicap parking space in public facilities, (b) the Disabled Owner provides the Original Owner with a license to use the Disabled Owner's Parking Space located in the same parking area as the Original Owner's Parking Space, and (c) upon such time that the Disabled Owner (or his or her occupant if such occupant is leasing such Owner's Unit pursuant to the terms hereof) no longer qualifies as provided in subsection (a) hereof, the licenses shall automatically expire and the Original Owner and the Disabled Owner shall use their respective, original Parking Spaces. THE OWNER OF ANY HANDICAP SPACE AND ANY MORTGAGEE OF SUCH HANDICAP SPACE, BY ACQUIRING AN INTEREST IN SUCH HANDICAP SPACE, IS DEEMED TO AGREE THAT THE HANDICAP SPACE IS SUBJECT TO RE-ASSIGNMENT AS PROVIDED IN THIS SUBSECTION 5.5.4 AND IS DEEMED TO CONSENT TO SUCH RE-ASSIGNMENT UPON THE TERMS AND CONDITIONS DESCRIBED HEREIN FOR ALL PURPOSES OF THIS SECTION, INCLUDING COMPLIANCE WITH ANY APPLICABLE LAWS. ANY SUCH OWNER SHALL BE DEEMED TO AGREE TO EXECUTE ANY INSTRUMENT OR DOCUMENT REQUESTED BY THE ASSOCIATION TO EVIDENCE THIS CONSENT.

## ARTICLE 6 ASSOCIATION

6.1 **ASSOCIATION GENERAL PURPOSES AND POWERS.** The Association shall manage the Common Elements and personal property of the Association as provided in this Declaration, the Articles and the Bylaws. It shall have all powers necessary or desirable to effectuate such purposes, including the right to: (a) operate, inspect, regulate, manage, maintain, alter, repair, replace, and charge fees in connection with the operation and use of the Common Elements; (b) enforce all provisions of this Declaration; and (c) perform all rights and obligations granted to the Association by the



Association Documents and the Act. The administration and management of the Common Elements shall be governed by the Act and the Association Documents.

6.2 **PERSONAL PROPERTY.** The Association may acquire, hold and dispose of tangible and intangible personal property. The Owners shall have no beneficial interest in such property, except such right to enjoyment and use thereof as may be granted to the Owners by applicable Rules. Each Owner may use such personal property for its intended purpose, subject to the Rules, and in a manner that does not unreasonably hinder or encroach upon the lawful rights of the other Owners.

6.3 **BOARD .**

6.3.1 *Number and Classification of Directors.* During the Period of Declarant Control, the Board shall consist of three (3) persons or such other number as determined by Declarant. Following expiration or termination of the Period of Declarant Control, the Board shall consist of the number of persons set forth in the Bylaws. Except for members of the Board appointed by the Declarant during the Period of Declarant Control, all members of the Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Board shall be an authorized representative of such entity Member.

6.3.2 *Election of the Board.* Members of the Board shall be elected or appointed as set forth below in this Section 6.3.2.

6.3.2.1 During the Period of Declarant Control: (a) subject to the balance of this Section 6.3.2.1, Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board; (b) no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Members other than Declarant; and (c) not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board must be elected by the Members other than Declarant.

6.3.2.2 After the earliest of: (a) termination of the Period of Declarant Control; (b) such other time as may be required pursuant to the Act; or (c) such other time as Declarant may, in its sole discretion determine, the Owners (including Declarant to the extent Declarant owns one or more Units) shall elect all members of the Board, at least a majority of which Board members must be Owners (or their designated representatives) other than Declarant.

6.3.2.3 Notwithstanding anything in this Section 6.3.2 to the contrary, Declarant may voluntarily relinquish any power to appoint Board members provided herein by executing a notice to such effect and recording such notice with the Clerk and Recorder, and in such event, Declarant may, at its option, require that specified actions of the Association or the Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

6.3.3 *Powers of the Board.* Except for those matters expressly reserved to the Members as provided in the Association Documents, the Act, and/or the Nonprofit Act, the Board may act in all instances on behalf of the Association, to:

- (a) adopt and amend Bylaws and Rules and Policies;
- (b) determine Common Expenses and adopt and amend the Budget for revenues, expenditures and reserves;
- (c) collect Assessments;
- (d) hire and terminate Managing Agents and other employees, agents and independent contractors and enter into contracts for professional management of the Community and the Association, and to carry out and perform all or any part of the functions, powers, duties and services which the Board may lawfully delegate;
- (e) subject to Section 24.11.3 below, institute, defend or intervene in litigation or administrative proceedings in the Association's name on behalf of itself or two or more Owners on matters affecting the Project;
- (f) borrow money to improve the Common Elements and to mortgage said Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a security interest unless in compliance with Section 312 of the Act;
- (g) make contracts and incur liabilities, except that any agreement for professional management of the Association's business or other contract providing for services by Declarant to the Association shall have a maximum term of three years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice;
- (h) subject to the terms of this Declaration, regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (i) cause additional Improvements to be made as a part of the Common Elements;
- (j) acquire, hold, encumber and convey in the name of the Association any right, title or interest in personal property;
- (k) grant easements, leases, licenses and concessions through or over the Common Elements to the extent that the same does not unreasonably interfere with use of the General Common Elements and Limited Common Elements by the Owners of Units to which they are allocated;
- (l) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (other than those Limited Common Elements described in Sections 202(1)(b) and (d) of the Act), provided that no fee, charge or payment may be assessed against any Owner or its Permittee;

(m) enforce the Association Documents, along with all other Rules adopted by the Board, including, without limitation, enforcement by: (i) suspending membership privileges (including, without limitation, voting privileges); and (ii) subject to the Policies, levying and collecting fines for the violation any of the Association Documents;

(n) impose charges (including late charges and default interest) for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and levy reasonable fines for violations of the provisions of the Governing Documents or otherwise suspend other membership privileges in accordance with the Policies;

(o) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(p) provide for the indemnification of its officers and Board members and maintain directors' and officers' liability insurance;

(q) assign its right to future income, including the right to receive Assessments, except that such Board action shall be effective only with the consent of Owners holding at least fifty-one percent (51%) of the Voting Interests;

(r) exercise any other powers conferred by this Declaration or the Bylaws;

(s) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including those powers specified by the Nonprofit Act; and

(t) exercise any other powers necessary and proper for the governance and operation of the Association.

**6.4 AGENCY WAIVER.** Notwithstanding anything to the contrary contained in Section 6.3.3 but subject to the limitations of applicable law, the Association may enter contracts and leases in violation of the requirement set forth in Section 6.3.3 upon the waiver by HUD, VA, FNMA, and/or FHLMC of any provisions of any of such Agencies' legal requirements that would otherwise be violated by such contracts and leases.

**6.5 ARTICLES OF INCORPORATION AND BYLAWS.** The purposes and powers of the Association and the rights and obligations of the Association with respect to Owners set forth in this Declaration may be amplified, but not modified, by the provisions of the Articles and the Bylaws. In the event of a conflict between the provisions of the Articles and the Bylaws and the provisions of this Declaration, the provisions of this Declaration shall control.

**6.6 COMMON ELEMENTS.** Subject to Section 11.1 below: (a), the Association shall provide for the care, operation, management, and Repair Work for the Common Elements; and (b) without limiting the generality of the foregoing, such obligations shall include keeping the Common Elements in good, clean, attractive and sanitary condition, order and repair; removing any materials from the Common Elements that might impair access to the Units or the Project; and making necessary

or desirable alterations, additions, betterments, or improvements to or on the Common Elements. In general, the Association shall exercise its duties in a manner designed to maintain the value of the Project as a first-class residential real estate property comparable to other first-class residential properties of similar size and type in the Town of Vail.

**6.7 MANAGING AGENT.** The Association may contract with a Managing Agent to manage the affairs of the Association, which Managing Agent may charge competitive fees for the services provided. Any contract with a Managing Agent shall provide for the right of the Association to terminate such contract without penalty or termination fee at any time upon not more than ninety (90) days' prior written notice.

**6.8 WORKING CAPITAL FUND.** The Association shall require the first Owner (other than Declarant) of any Unit who purchases that Unit from Declarant, to make a non-refundable contribution to the Association in an amount equal to two (2) times the then-current monthly installment of the annual Assessment. Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from the obligation to make regular payments of Assessments as the same become due. Upon the transfer of his/her/its Unit, an Owner may secure a credit from his or her transferee (but not from the Association) for the aforesaid contribution to working capital fund.

**6.9 BOOKS AND RECORDS.** The Association shall make available for inspection, upon request, during normal business hours or pursuant to other reasonable circumstances, to Owners, Agencies and Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Association's Bylaws and as required by the Nonprofit Act and the Act. The Association may charge a reasonable fee for copying such materials. For purposes of this Section 6.9, reasonably available shall mean: (a) available during normal business hours upon at least five (5) business days' prior written notice; or (b) or at the next regularly scheduled meeting of the Members if such meeting occurs within thirty (30) days after the request.

**6.10 RULES.** The Board may promulgate and enforce, including enforcement by levying and collecting charges or fines for the violation thereof, reasonable Rules governing the use of the Units, Parking Spaces, Storage Areas, Common Elements (including the shared parking spaces) and any property owned or managed by the Association. All such Rules shall be consistent with, and shall not materially diminish, the rights and duties established in this Declaration and the reasonable enjoyment of the uses permitted hereunder, and in no event shall any such Rules change the uses to which any Unit is restricted pursuant to this Declaration.

## **ARTICLE 7 MEMBERSHIP AND VOTING RIGHTS**

**7.1 MEMBERSHIP IN THE ASSOCIATION.** Each Owner of a Unit shall automatically be a Member of the Association. Membership in the Association is appurtenant to, and inseparable from, each Unit and shall automatically pass with fee simple title to a Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to membership. If fee simple title to a Unit is held by more than one person or entity, then such persons or entities shall

{00680700.DOCX:3}

jointly appoint one person to exercise the rights and obligations of membership in the Association on behalf of such persons or entities, failing which, such Owners shall not have the right to vote as a Member nor to appoint directors to the Board.

**7.2 VOTING AND APPROVAL RIGHTS.** The Association shall have one class of membership consisting of the Owners. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote on matters affecting the Association in accordance with their Voting Interests described in Section 9.3 below. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners pursuant to the Association Documents.

**7.3 TRANSFER OF MEMBERSHIP.** Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of a Unit and then only to the purchaser or lien holder with respect to such Unit. The Association shall not create a right of first refusal on any Unit, and Owners may transfer ownership of their Units free from any such right.

## **ARTICLE 8 EASEMENTS**

**8.1 RECORDED EASEMENTS.** The Property shall be subject to all easements as shown on the Map, any plat, or other documents of record as of the date of this Declaration, those provided in the Act, and as otherwise set forth in this Declaration. Recorded easements that affect the Property as of the date of this Declaration are described in Exhibit C attached hereto.

**8.2 DECLARANT'S EASEMENT RIGHTS.** Declarant, for itself, its contractors and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements (except those Limited Common Elements allocated to Units that have been sold by Declarant to a third party), together with the right to store materials on the Common Elements (except those Limited Common Elements allocated to Units that have been sold by Declarant to a third party), to build and maintain temporary walls, and to make such other use of the Common Elements (except those Limited Common Elements allocated to Units that have been sold by Declarant to a third party) as may be reasonably necessary or incident to any construction of the Units, or Improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property, or to perform warranty work and repairs and construction work on the Units and Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. In addition, Declarant, for itself, its successors and assigns, further reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising any Special Declarant Rights reserved pursuant to this Declaration. Such rights may be exercised by Declarant from time to time, and at different times until termination thereof pursuant to Section 16.15, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

**8.3 ENCROACHMENT EASEMENTS.** If there is an encroachment of Common Elements upon a Unit, or a Unit upon Common Elements or another Unit, a valid easement for the encroachment and maintenance thereof shall exist so long as such encroachment does not materially adversely interfere with the use or occupancy of any portion of the Project. Encroachments referred to herein include encroachments caused by: (a) errors in the original construction of the Buildings; (b) errors in

the Map; (c) settling, rising or shifting of the earth; and (d) changes in position caused by repair or reconstruction of all or any part of the Project.

**8.4 UTILITY EASEMENTS.** There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements, Units, and Improvements situated on the Property for ingress and egress for utility providers and for the installation, replacing, repairing and maintaining of all Utilities, except that, if not already in existence, such easement may not be utilized by the utility providers until a written easement agreement setting forth the specific location of the desired easement is executed by the Declarant or Association and such utility provider. The Board may condition the Association's approval on such matters as it deems appropriate, including location, design, alterations to existing structures and impact on the Common Elements and the Project, and the Board will not approve any utility easement request if the Board finds that such easement would interfere with the reasonable use and enjoyment of a Unit. Said blanket easement includes future utility services not presently available to the Units that may reasonably be required in the future. By virtue of this easement, after receiving approval of the Association, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment in any of the Units and to affix and maintain wires, circuits, conduits, pipes, cables, transceivers, fiber optics and ducts on, above, across and under the roofs and exterior walls of the Improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Board as provided above. Upon exercise of the rights contained in this Section 8.4, utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all Improvements thereon to their condition as they existed prior to the utility providers performing any work. The foregoing blanket easement for Utilities shall also be applicable to specific Utility easements shown on the Map.

**8.5 SUPPORT EASEMENTS.** Each Owner shall have a non-exclusive easement for horizontal, vertical and lateral support of such Owner's Unit, including a non-exclusive easement in and to all structural members, columns, beams, foundations, load bearing walls, and other structural components located in or constituting a part of the Common Elements or another Owner's Unit for the support of such Owner's Unit, and the support of any Common Elements surrounding, adjoining or located within such Owner's Unit.

**8.6 ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.**

**8.6.1** A general non-exclusive easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property, including all Units and all Common Elements in the proper performance of their duties.

**8.6.2** Some of the Common Elements are or may be located within a Unit. All Owners shall permit a right of entry to the Board, a Managing Agent, or any other person authorized by the Board or a Managing Agent, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for Repair Work for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. In order to facilitate the aforesaid Repair Work, all Owners shall provide the authorized Managing Agent(s) keys to their respective Units.

**8.6.3** Notwithstanding anything in Section 8.6.2 to the contrary, for Repair Work other than emergency Repair Work, entry shall be made only on a regular business day during regular

business hours, after providing the Owner with at least one day's written notice. In an emergency, entry shall be made at any time, provided that a reasonable effort according to the circumstances is made to give advance notice of entry and to minimize the effect of any such entry on any Owner and such Owner's Permittees.

8.6.4 The Board or its Managing Agent is granted the authority to use such reasonable force as is necessary to gain entry into a Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as an Owner has provided the authorized Managing Agent with a key as set forth in Section 8.6.2 above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements resulting from such forcible entry.

8.6.5 All damage to the interior or any part of a Unit resulting from the Repair Work of any of the Common Elements at the instance of the Association shall be paid for as part of the General Assessment by all of the Owners benefited by the Repair Work. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort or lost profits arising from the Repair Work or other action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged Improvements shall be to a condition substantially the same as the condition in which they existed prior to damage.

8.6.6 Notwithstanding the foregoing, if any such damage is the result of the failure of an Owner to provide the authorized Managing Agent with a key to its respective Unit and/or the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event an Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for said damages and charge such Owner responsible as a Default Assessment.

8.7 **OWNERS' EASEMENTS.** Subject to the provisions of this Declaration and the right of the Association to regulate the use of, and convey or encumber, the Common Elements as set forth herein, each Owner and its Permittees shall have an easement: (a) in the General Common Elements for the purpose of ingress, egress and access to their Unit and, as appropriate, and to any Limited Common Elements allocated to such Units; and (b) to use the General Common Elements in common with other Owners.

8.8 **EASEMENTS DEEMED APPURTENANT.** The easements, uses, and rights created herein for any Owner shall be appurtenant to its Unit and all conveyances of and other instruments affecting title to a Unit shall be deemed to grant and be subject to the easements, uses, and rights provided for herein, even though no specific reference to such easements, uses and rights appears in any such instrument. Each Owner whose Unit is subject to an easement created by this Declaration may use the easement area for any purposes permitted in this Declaration not inconsistent with such easement and shall also have the right to temporarily interrupt the use of such easements as may be reasonably necessary to perform Repair Work to Common Elements or Units, provided that the temporary interruption does not materially interfere with the use and occupancy of another Owner's Unit or the Common Elements. Each Owner shall have the right to relocate any easement within its Unit at its own expense, so long as such Owner provides an adequate replacement easement that does not materially interfere with the use and occupancy of another Unit or the Common Elements.

8.9 **EASEMENT FOR EXPANSION AREA.** Declarant hereby reserves, for the use and benefit of the Expansion Area, a non-exclusive, perpetual easement and right-of-way on, over, across and under the Common Elements for vehicular and pedestrian access, ingress and egress, utilities, and the construction, location, erection, installation, storage, maintenance, repair, renovation, replacement and use of any utilities, Improvements that may now or hereafter serve such Expansion Area or any portion thereof (collectively, the “*Expansion Area Easement*”). By virtue of this Expansion Area Easement, Declarant generally intends to provide for vehicular and pedestrian access and for utilities services to those portion(s) of the Expansion Area pursuant to Section 16.2 of this Declaration. Hence, the Expansion Area Easement shall be in effect for each portion of the Expansion Area, from and after recording of this Declaration, but shall cease to be effective as to each portion of the Expansion Area at such time as both of the following have occurred with respect to such portion of the Expansion Area: amendment of the Map and this Declaration to reflect the addition of Units to the Community within such portion of the Expansion Area pursuant to Section 16.2, and expiration of Declarant’s right to withdraw such portion of the Expansion Area from this Declaration.

8.10 **RESERVATION OF EASEMENTS, EXCEPTIONS AND EXCLUSIONS.** The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other non-exclusive easements, permits or licenses over the General Common Elements for the best interest of the Owners and the Association.

8.11 **ADDITIONAL EASEMENTS.** If at any time after the date hereof: (a) additional emergency easements are required by law or by insurance underwriting requirements generally applicable to residential projects; (b) any additional easements for access to or use of Utilities are reasonably necessary for the use and operation of any one or more Units; or (c) any additional easements are necessary or desirable to effectuate the purposes of this Declaration, each Owner shall, within a reasonable time after written request by any other Owner, grant such easement; provided, however, that: (x) no Owner granting any such easement is required to construct Improvements, expend any monies, or incur other material liabilities in order to provide such easement (other than costs paid solely by the Owner(s) for whose benefit such easement is to be granted); (y) such easement will not materially increase expenses, or create any material additional expenses, for any portion of the Project (unless allocated to and paid by the Owner(s) for whose benefit such easement is to be granted or unless required by law); and (z) the use of such easement will be non-exclusive and will not unreasonably interfere with the operation, use or enjoyment of such Owner’s Unit or violate or interfere with the rights or interests of such Owner’s Permittees. The Owners requesting any such easement shall pay all costs and expenses in connection with the approval and granting of any such easement, including all engineering fees, recording charges and legal fees and expenses reasonably incurred by the Owners or any of them in connection therewith. If new easements are created, this Declaration and the Map shall be amended, if necessary, by Declarant or the Association, as the case may be, and such easements shall have the same force, effect and priority as if such easements were originally contained herein.

## **ARTICLE 9 ASSESSMENTS**

9.1 **ASSESSMENTS.** All Owners, including Declarant while it is an Owner of any Unit, shall be obligated to pay all Assessments imposed by the Association. Each Assessment against a Unit is



the personal obligation, jointly and severally, of the Owner(s) at the time the Assessment became due. No Owner may exempt itself from liability for the Assessment by abandonment of its Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments shall be payable in accordance with the levy thereof, without offset or deduction.

9.2 **ALLOCATION OF COMMON EXPENSES.** Except as otherwise expressly provided in this Declaration, all assessments for Common Expenses shall be allocated among the Units in accordance with the Expense Sharing Ratios set forth for each Unit in Exhibit B or as provided in Section 9.2.5 below. Such assessments will be determined by multiplying the total amount of each category of Common Expenses by the respective Expense Sharing Ratio for each Unit.

9.2.1 *General Common Expenses.* For purposes of this Declaration, "**General Common Expenses**" shall mean all Common Expenses other than Limited Common Expenses. Examples of anticipated General Common Expenses include taxes and special assessments against the General Common Elements, if any, premiums for insurance (but excluding any separate or additional premiums attributable to one or more but not all of the Units), Utility charges for the General Common Elements or charges not otherwise chargeable to a particular Owner or group of Owners, expenses associated with the maintenance of the stormwater facility that serves the Property, expenses for maintenance and repairs to sidewalks and alleys adjacent to the Property, expenses for maintenance, repairs and renovations not otherwise chargeable to a particular Owner or group of Owners, wages, legal and accounting fees (not otherwise chargeable to a particular Owner or group of Owners), capital expenditures (not otherwise chargeable to a particular Owner or group of Owners), expenses and liabilities incurred by the Association or its Managing Agent on behalf of the Owners pursuant to, or by reason of, the Association Documents not otherwise chargeable to a particular Owner or group of Owners, any deficit from a previous period not otherwise chargeable to a particular Owner or group of Owners, creation of a reasonable capital improvement reserve and a contingency reserve for the General Common Elements, and all other costs and expenses related to the General Common Elements not otherwise chargeable to a particular Owner or group of Owners. General Common Expenses shall be allocated among Unit Owners based upon either General Expense Sharing Ratios or Common Expense Sharing Ratios, as determined by the Board and as set forth in the Budget.

9.2.2 *General Expense Sharing Ratio.* This figure shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to a Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Units in the Project (determined pursuant to Section 9.3.1 below). The General Expense Sharing Ratios will be set forth in Exhibit B, as may be amended pursuant hereto.

9.2.3 *Common Expense Sharing Ratio.* This figure shall be the percentage equivalent to a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Units in the Project.

9.2.4 *Limited Common Expenses.* For purposes of this Declaration, the term "**Limited Common Expenses**" shall mean all expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, insurance, Utilities and other expenses and expenditures associated with a Limited Common Element the use or benefit of which is allocated to

less than all of the Units, as reflected either in this Declaration or on the Map, as each may be amended pursuant hereto, and which expense is not otherwise allocated pursuant to this Article 9.

9.2.5 *Limited Expense Sharing Ratios.* As to a Unit to which a Limited Common Expense is to be allocated, the “**Limited Expense Sharing Ratio**” shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to that Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Units (determined pursuant to Section 9.3.1 below) to which the particular Limited Common Expense is to be allocated.

9.2.6 *Changes in Expense Sharing Ratios and Voting Interests.* Exhibit B shall be amended by Declarant following the combination or subdivision of any Unit in accordance with Article 4 pursuant to a reasonable method to be determined by the Board.

9.3 **DETERMINATION OF VOTING INTERESTS.** The Voting Interest of each Owner shall be determined and governed by the provisions of this Section 9.3 as set forth below.

9.3.1 *Voting Interests.* With respect to all matters on which Owners are entitled or may be requested to vote or approve, each Owner of a Unit shall be entitled to one vote for each 100 square feet of Gross Floor Area included within a Unit. The Gross Floor Area of each Unit shall be as reasonably determined by Declarant. The “**Voting Interests**” will be as set forth on Exhibit B, as may be amended pursuant hereto.

9.3.2 *No Vote if Not in Good Standing.* No Owner shall be entitled to vote on any matter if such Owner is not in Good Standing with the Association, and the Voting Interest of such Owner not in Good Standing shall be excluded from the calculation of the percentage required for approval of the vote or matter in question (both as to numerator and denominator). All Owners in Good Standing shall be entitled to vote in accordance with the provisions of Section 7.2 herein.

#### 9.4 **BUDGET.**

9.4.1 *Budget.* The Board shall prepare and adopt a proposed Budget for each fiscal year based on estimated Common Expenses. The Budget shall show, among other things, the categories of expenses, the amount of General Common Expenses and Limited Common Expenses, any capital expenditures, any expected income of the Association for the coming fiscal year, any expected surplus or deficit from the prior year, and any existing surplus held by the Association. The Budget shall also show which categories of General Common Expenses are allocated among Owners based upon General Expense Sharing Ratios and which categories are allocated among Owners based upon Common Expense Sharing Ratios. The Budget may include amounts for contingencies and amounts deemed necessary or desirable to create, replenish, or add to Association funds and reserves for capital expenditures related to the Common Elements and such other Association expenditures permitted hereunder.

9.4.2 *Approval by Owners.* Within ninety (90) days after the adoption of the proposed Budget, the Board shall: (a) mail, by ordinary first class mail, or otherwise deliver (including by email to the extent permitted by the Act), a summary of the Budget to all Owners; and (b) shall set a date for a meeting of the Owners to consider ratification of the Budget within a reasonable time after mailing or other delivery of the summary or within such time as may be required by Association

{00680700.DOCX:3}

Documents or the Act. Unless at that meeting Owners holding at least fifty-one percent (51%) of the Voting Interests reject the Budget, the Budget shall be deemed ratified, whether or not a quorum of all Members of the Association is present. In the event that a proposed Budget is rejected, the periodic Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

9.4.3 *Reserve Fund.* The Association shall maintain an adequate reserve fund for the Repair Work to be performed on the Common Elements, which reserve shall be funded by General Assessments based on Expense Sharing Ratios and shall be included in the Budget.

9.5 **GENERAL ASSESSMENTS.** An Owner's General Assessment shall be determined based on the adopted and ratified Budget. The Board shall levy and assess the General Assessments to each Owner in accordance with the Expense Sharing Ratios in effect on the date of the General Assessment; provided, however, that the Board may allocate those expenses relating to fewer than all of the Units to Owners of those affected Units only. General Assessments shall be payable in advance monthly and shall be due on the first day of each month in regular installments on a prorated basis. If the Association omits or fails to set the amount of the General Assessments for any assessment year, Owners shall be obligated to continue making periodic payments to the Association for General Assessments in the same amount and on the same schedule as last fixed by the Association. General Assessments shall provide for the payment of all estimated Common Expenses.

9.6 **DATE OF COMMENCEMENT OF GENERAL ASSESSMENTS.** The General Assessments shall commence as to each Unit on the first day of the month following the effective date of adoption and ratification of the first Budget, but in any event, no later than thirty (30) days following the conveyance of the first Unit to a party other than Declarant. Until commencement of the General Assessments, the Declarant shall pay all Common Expenses of the Association. In addition, Declarant is specifically authorized, but has no obligation, to provide subsidies to the Association as a result of any shortfalls in Association revenues not covered by Assessments, or the Declarant may enter into contracts for "in kind" contribution of services, materials, or a combination of services and materials. The payment of a subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

9.7 **SPECIAL ASSESSMENTS.** In addition to the General Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction (excluding costs of initial completion, which shall be paid by Declarant) or reconstruction, unexpected repair or replacement of Association-Insured Property or for any other expense incurred or to be incurred as provided in this Declaration. This Section 9.7 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section 9.7 shall be assessed to Owners according to their Expense Sharing Ratios for Common Expenses, subject to the terms of this Declaration (including the fact that the Board may allocate Special Assessments to only Owners of affected/benefitted Units if the nature of the Special Assessment affects or benefits less than all Units/Owners). Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to

the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

9.8 **DEFAULT ASSESSMENTS.** All monetary fines and other enforcement costs assessed against an Owner pursuant to Association Documents, or any expense of the Association that is the obligation of an Owner or is incurred by the Association on behalf of an Owner pursuant to the Association Documents, and all other monetary obligations of Owners pursuant to the Association Documents, other than with respect to General Assessments and Special Assessments, including attorneys' fees incurred by the Association, shall constitute a "**Default Assessment**," which Default Assessment shall be due and payable no later than fifteen (15) days after the Association's provision of written notice thereof.

9.9 **LIMITED COMMON EXPENSES.** The Association may include in any type of Assessment the amount of any Limited Common Expense authorized by this Declaration for which the assessed Owner is liable.

9.10 **ASSESSMENTS/CHARGES FOR SERVICES TO LESS THAN ALL UNITS IN COMMUNITY.** The Association may, at any time from time to time, provide services to less than all of the Units in the Community. If such services are not funded by General Assessments or Special Assessments, then such services shall be provided, if at all, pursuant to a writing that includes a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services that may be provided by the Association pursuant to this Section include (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions; (c) the enforcement of the provisions of any declaration, covenants or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

9.11 **EFFECT OF NONPAYMENT: ASSESSMENT LIEN.** Any Assessment installment that is not paid when due, shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may, subject to the Policies and any requirements of the Act, take any or all of the following actions:

(a) assess a late charge for each delinquency in such amount as the Association deems appropriate (in accordance with the Policies);

(b) assess an interest charge, in arrears, from the due date at such rate as may be set from time to time by the Board of Directors (not to exceed the maximum rate permitted under applicable law);

(c) suspend the voting rights of the Owner during any period of delinquency;

(d) accelerate all remaining Assessments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable immediately;

(e) bring an action at law against any Owner or former Owner personally obligated to pay the delinquent Assessments;

(f) proceed with foreclosure in accordance with the Policies, as set forth in more detail below; and

(g) in accordance with the Policies, suspend any of the Owner's membership privileges in the Association.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of, and have the priority described in, Section 316 of the Act. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a deed of trust on real property pursuant to the laws of the State of Colorado, as further described in the Policies. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly Assessment installments for the Unit during the period of any foreclosure. Unless prohibited by applicable law, the Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Subject to Section 316 of the Act, the Association's lien shall be superior to any homestead or other exemption now or hereafter provided by the laws of the State of Colorado or by the laws of the United States and the acceptance of a deed to a Unit shall constitute a waiver of such exemptions.

**9.12 FAILURE TO LEVY ASSESSMENT.** The failure to levy any Assessment or deliver a statement for any period shall not be deemed a waiver, modification, or a release of any Owner from its obligation to pay, and such Owner shall be obligated to continue making periodic payments to the Association for such Assessment in the same amount and on the same schedule as last fixed by the Association.

**9.13 STATEMENT OF STATUS OF ASSESSMENT PAYMENT.** The Association shall furnish to any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, upon written request to the Association or its registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of the unpaid Assessments currently levied against such Unit, if any. The statement shall be furnished after written request within such times as required by law, and is binding upon the Association, the Board, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such statements.

**9.14 MAINTENANCE ACCOUNTS: ACCOUNTING.** If the Association delegates powers of its Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Managing Agent, then such other persons or Managing Agent must: (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Managing Agent; (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association; and (c) provide to the Association no less than once per month an accounting for the previous month. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion and in compliance with the Act) and annual tax returns prepared by a certified public accountant or as otherwise required by the Act.

9.15 **SEPARATE UNITS.** Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Project (including the Leasehold interest in the Property) other than Units shall be deemed a parcel. The lien for taxes assessed to any Unit shall be confined to such Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Unit. In the event the taxes or assessments for any year are not separately assessed to each Owner but rather are assessed on the Project as a whole, then each Owner shall pay its proportionate share thereof in accordance with such Owner's Expense Sharing Ratio, and in such event, such taxes or assessments shall be a General Common Expense. The Association shall collect from each Owner its proportionate share of taxes and assessments for any year in which taxes are assessed on the Project as a whole.

## **ARTICLE 10 INSURANCE**

10.1 **GENERAL INSURANCE PROVISIONS.** The Association shall acquire and pay for, out of the Assessments, the Association insurance policies described in this Article 10 with reputable insurance companies authorized to do business in Colorado.

10.2 **CERTIFICATES OF INSURANCE; CANCELLATION.** Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried by the Association pursuant to this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days' prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the documents of the Association. Each Owner shall provide the Association with certificates evidencing the insurance required pursuant to Sections 10.8 and 10.9 below. All policies required to be carried by Owners pursuant to Sections 10.8 and 10.9 below shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days' prior written notice to the Association and First Mortgagee. If any insurance coverage required of the Association and described in this Article 10 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees. Insurance policies required to be carried pursuant to this Article 10 shall provide for waiver of by the insurer of any rights of subrogation against the Association, the Managing Agent and any insured.

10.3 **INSURANCE PROCEEDS.** The insurance proceeds for any loss covered by insurance policies described in Article 10 shall be payable to a trustee designated for that purpose, or otherwise to the Association and not to any Owner or any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.4 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the Community is terminated.

**10.4 REPAIR AND REPLACEMENT OF COMMON ELEMENTS.** Any portion of the Common Elements for which insurance is required pursuant to this Article 10 that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Community is terminated in accordance with Section 19.2 below;
- (b) repair or replacement would be illegal pursuant to any state or local statute or ordinance governing health or safety;
- (c) there is an affirmative vote not to rebuild by: (i) the Requisite Percentage of the Owners and First Mortgagees; (ii) every Owner of a Unit (or a Limited Common Element allocated to a Unit) that will not be rebuilt; and (iii) every Owner of a Unit that depends for structural support on the damaged or destroyed Common Element; or
- (d) prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a General Common Expense, a Limited Common Expense, or a combination of the foregoing, based on the type of Common Element damaged, as determined by the Board. If all of the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must 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 distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees in proportion to the Owners' Expense Sharing Ratios.

**10.5 HAZARD INSURANCE COVERAGE FOR THE COMMON ELEMENTS.** The Association will procure and maintain at its expense (which shall be a Common Expense) insurance for all risks of physical damage, with extended coverage, boiler and machinery, fire, vandalism, terrorism, malicious mischief, earthquake, demolition and replacement cost, sprinkler leakage, agreed amount (if the policy includes co-insurance), special condominium, building ordinance (including modern code compliance) and inflation guard endorsements attached (collectively, "**Hazard Insurance**"), in amounts not less than the full then current insurable replacement cost of the Common Elements (including all Improvements that are Common Elements), but excluding all fixtures, interior walls and floors, partitions, decorated and finished surfaces of interior and exterior walls, floors, and ceilings, doors, windows, and other elements or materials that comprise a part of the Units, any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant), any furniture, personal property and other contents located within the Units. Such insurance is referred to as "bare walls" policy and may further exclude building excavations and foundations if such coverage is not available. The insurable replacement cost of the Common Elements will be based on the most recent appraisal provided by a qualified appraiser as updated from time to time in accordance with policy requirements. Maximum deductible amounts for such policies shall be determined by the Board; provided, however, that if an Agency or First Mortgagee requires specific deductibles, the Board shall follow such Agency's or First Mortgagee's requirements (with the incremental insurance cost incurred to be specifically allocated by the Association as a Limited Common Expense of the Unit securing the requiring Agency's or First Mortgagee's Mortgage). Payment of the deductible or payment of any loss falling within the deductible portion of a policy will be made by the Association. Funds to cover the

{00680700.DOCX:3}

deductible amounts or any losses within the deductible portion of a policy will be Common Expenses allocated among Owners in accordance with their Expense Sharing Ratios. The Hazard Insurance will name each Owner as an additional insured.

**10.6 COMMERCIAL LIABILITY FOR THE ASSOCIATION.** The Association will procure and maintain at its expense (which shall be a Common Expense) commercial general public liability and property damage insurance (including sprinkler leakage liability) for the Project (“**Liability Insurance**”) in such amounts as the Board deems desirable, provided that such coverage shall be for a minimum of \$1,000,000 for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such policies shall insure the Association and the Board, the Managing Agent(s) and their respective agents and employees, and the Owners and their Permittees (to the extent that such insurance extending to all Permittees is available) from liability in connection with the operation, maintenance and use of Common Elements and must include a “severability of interest” clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to common interest ownership communities similar to the Project in the Town. The Board shall not enter into independent contractor contracts of any kind unless the contracting party provides evidence (such as a certificate of insurance) to the Board that such party has current and satisfactory insurance, including worker’s compensation insurance, commercial general liability and automobile insurance, all of which name the Association and its Members as additional insureds. If the Association shall enter into an employer-employee relationship with any individual, the Association shall procure the insurance coverage set forth in the immediately preceding sentence. The Liability Insurance shall not cover individual operations of Units, which shall be separately obtained by the Owners in accordance with Section 10.9 below.

**10.7 ASSOCIATION INSURANCE REQUIREMENTS.** The insurance policy required by Section 10.6 above may be carried in blanket policy form naming the Association as the insured, for the use and benefit of the Owners, the members of the Board and their respective agents. Each Owner shall be named as an additional insured pursuant to such policy with respect to liability arising out of such Owner’s interest in the Common Elements or membership in the Association. The insurance company shall waive its rights of subrogation. No act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, and no act or omission of any other insured, shall void the insurance policy or be a condition to recovery pursuant to the insurance policy. If, at the time of a loss pursuant to an insurance policy described in Section 10.6 above, there is other insurance in the name of the Owner covering the same risk covered by the policy of the Association, the Association’s policy shall provide primary insurance.

Notwithstanding anything contained herein to the contrary, all insurance carriers selected by the Association pursuant to Sections 10.5 and 10.6 shall conform to the minimum financial rating, asset size, and other reasonable requirements imposed by Agencies and First Mortgagees; provided, however, that in no event shall any insurance required hereunder be maintained with an insurer having a rating by Best Insurance Reports that is lower than “A-/XIII” (or if such rating is no longer published or is modified, then such rating or qualifications as shall be equivalent to the aforesaid rating as determined as of the date of this Declaration), without the approval of all First Mortgagees.

**10.8 OWNERS’ HAZARD INSURANCE.** Each Owner of a Unit shall obtain and maintain Hazard Insurance which covers its Unit to the extent not covered by policies maintained by the Association as described above. Such Hazard Insurance shall provide coverage from the unfinished

{00680700.DOCX:3}



interior surfaces of perimeter walls in (*i.e.*, “*studs in*”), including, without limitation, finished interior surfaces of the walls, floors, and ceilings, furniture, wall trimmings, improvements, equipment, fixtures, additional or other personal property supplied or installed by such Owner within its Unit in a minimum amount equal to the greater of: (a) the replacement value thereof; or (b) such greater amount as may be required by any First Mortgagee. The Hazard Insurance required to be carried by Owners under this Section 10.8 is currently referred to as an HO-6 Policy.

**10.9 OWNERS’ LIABILITY INSURANCE.** Each Owner of a Unit shall obtain and maintain Liability Insurance coverage in such amounts as the Board deems desirable, provided that such coverage shall be for a minimum of \$300,000 for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such liability policies shall insure the Owner, its Permittees and their respective agents and employees (to the extent that such coverage is reasonably available) from liability in connection with the operation, maintenance and use of the Unit and must include a “severability of interest” clause or specific endorsement. In addition, any liability policy obtained by an Owner shall name the Association and the Managing Agent as additional insureds. The insurance company providing any Liability Insurance or Hazard Insurance obtained by an Owner shall waive its rights of subrogation against the Association and the Managing Agent. The Association and each Owner, respectively, hereby waives its rights of recovery that the Association or Owner may have against the other or any other Owner arising out of any event or occurrence to the extent of the Liability Insurance or Hazard Insurance policy proceeds (plus deductible amounts) applicable to such event or occurrence.

**10.10 OWNERS’ FAILURE TO OBTAIN INSURANCE.** In the event an Owner fails to obtain and maintain any insurance required pursuant to Section 10.8 or Section 10.9 above, and an uninsured loss occurs that would have otherwise been covered by the insurance required by this paragraph, the Association shall have the option to repair, replace or restore the damaged property to its previous condition and such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association. In addition, in the event an Owner fails within thirty (30) days after notice from the Association to obtain and maintain any insurance required pursuant to Section 10.8 or Section 10.9 above, the Association may (but shall have no obligation to) obtain and pay for such insurance and charge such Owner responsible as a Default Assessment.

**10.11 FIDELITY INSURANCE.** Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any Managing Agents, hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of: (a) fifty thousand dollars (\$50,000); or (b) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or its Managing Agent, as the case may be, at any given time during the term of each policy, as calculated from the current Budget, but in no event less than a sum equal to three months’ aggregate General Assessments. In addition, if responsibility for handling funds is delegated to a Managing Agent, such insurance or bonds must be obtained by or for the Managing Agent and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees,” or similar terms or expressions.

**10.12 WORKER'S COMPENSATION INSURANCE.** The Association shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

**10.13 DIRECTORS AND OFFICERS LIABILITY INSURANCE.** The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of the Board, against any liability asserted against a member or former member of the Board or incurred by such person in his or her capacity of or arising out of his or her status as a member or former member of the Board, and against any liability asserted against any officer or former officer of the Association in connection with his or her service in that capacity.

**10.14 OTHER INSURANCE.** The Board may obtain any other type of insurance it considers appropriate in amounts it deems appropriate to insure the interests of the Association and the Owners, including umbrella or extended coverage insurance, automobile insurance, flood insurance, boiler and machinery insurance, building ordinance coverage or coverage requested by any Agency or First Mortgagee. The Board may also require each Owner to obtain and maintain other insurance with respect to the Units in the amounts and forms as may now or hereafter be required by law or deemed to be in the best interest of the Association.

**10.15 COMMON EXPENSES.** Unless otherwise identified as a Limited Common Expense, premiums for insurance that the Association acquires pursuant to this Article 10 and other expenses connected with acquiring such insurance are General Common Expenses. Notwithstanding the foregoing, if some of the insurance (or certain levels of insurance) is attributable to or requested by some but not all of the Units (or First Mortgagees holding Mortgages encumbering such Units), the Association may charge those specific Units for which the insurance coverage is attributable or requested an amount equal to the premium attributable to such insurance coverage. Likewise, if any activity, use, or practice conducted by occupants of some but not all of the Units causes insurance premiums to increase over a level that would be charged for ordinary residential activities, uses or practices, the Association may charge those specific Units the amount of such increase.

## **ARTICLE 11 MAINTENANCE**

**11.1 MAINTENANCE BY OWNERS.** Each Owner shall maintain and keep in good repair the interior of its Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Owners and Common Elements. All fixtures and equipment installed within the Unit commencing at a point where the Utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. Each Owner, at its sole cost and expense, shall further maintain and conduct such Repair Work as reasonably required to maintain any Limited Common Elements allocated solely to the Owner's Unit, other than those Limited Common Elements that the Association chooses to maintain for reasons of uniformity or structural considerations. Each Owner shall regularly inspect its Unit and any Limited Common Elements allocated solely to the Owner's Unit as required or recommended under the Owner Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. Notwithstanding the foregoing, the Association may, but shall not be obligated to, maintain storage areas, exterior patios, balconies, decks, stairways, Parking Spaces and other exterior portions of the Building (including, without limitation, the exterior of the exterior walls of the relevant Building), even if such portions are Limited Common Elements, and all costs incurred by the Association in that regard

{00680700.DOCX:3}

shall be charged to the Owners of the Units to which such Limited Common Elements are attached. An Owner shall otherwise do no act or any work that will affect the Common Elements or impair the structural soundness or integrity of the Common Elements or impair any easement. No damage to, or waste of, the Common Elements, or any part thereof, or any other Unit, shall be committed by any Owner or shall occur as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Unit or constructed by or on behalf of such Owner in or upon any of the Common Elements. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from: (a) any action or activities committed by such Owner or such Owner's Permittees over which it has contractual control; or (b) as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Unit or constructed by or on behalf of such Owner in or upon any of the Common Elements in violation of this Section 11.1.

**11.2 OWNER'S FAILURE TO MAINTAIN OR REPAIR.** In the event that an Owner fails to maintain or conduct Repair Work as required by Section 11.1 above, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board (after a determination by the Board that the condition of such Unit or Limited Common Element negatively impacts the value or use of other Units within the Project) shall have the right to enter upon the Unit and/or Limited Common Element to perform such Repair Work as is reasonably required to restore the Unit and/or Limited Common Element to a condition of good order and repair, except that no advance approval from the Board shall be required in the event of an emergency. All costs incurred by the Association in connection with the Repair Work shall constitute a Default Assessment.

**11.3 MAINTENANCE BY ASSOCIATION.** The Association shall be responsible for all maintenance and Repair Work with respect to: (a) the General Common Elements; and (b) Limited Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner as set forth in this Declaration or identified on the Map (except as set forth in Section 11.1 above or unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or its Permittees as set forth in Section 11.7 below). The Association shall regularly inspect the General Common Elements, and Limited Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner as required or recommended under the Project Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. In addition, the Association shall have the right to perform Repair Work on any Unit the Owner of which has failed to rebuild as required pursuant to this Declaration, the cost of such Repair Work constituting a Default Assessment.

**11.4 DECLARANT/CONTRACTOR INSPECTIONS.** During the first three years following the formation of the Community, Contractor and Declarant may periodically perform a walk-through of the Project, including all Common Elements and all Units, to inspect the performance of the various building components utilized in and through the Project and in connection with the Contractor's warranty. The Association and all Owners shall provide reasonable access to the Common Elements, including, among other Improvements, the roof, the mechanical rooms, the parking areas, amenity areas, decks, and storage room(s), and Units. The Declarant or Association shall give advance notice to the Owners of the date(s) and time(s) for such inspections. The purpose of such inspections is to observe

performance of the building components, to detect potential problems, and to notify the proper subcontractors, designers or manufacturers of any defects prior to the expiration of the Contractor's warranty period, as well as generally ascertaining that the building components are performing as designed.

**11.5 ASSOCIATION'S MAINTENANCE AS COMMON EXPENSES.** The cost of Repair Work by the Association (net of any insurance proceeds paid thereon): (a) regarding the General Common Elements shall be a General Common Expense, to be shared by Owners according to their respective Expense Sharing Ratios for such Common Expense; and (b) regarding any Limited Common Elements shall be a Limited Common Expense to be shared by Owners according to their respective Limited Expense Sharing Ratios for such Limited Common Expense. Notwithstanding the foregoing, if such damage is caused by negligent or tortious acts of an Owner or its Permittees, then such Owner shall be responsible and liable for all of such damage and the cost of repairing and restoring the same, to the extent that Owner or its Permittees' negligence, misuse or tortious acts caused such damage, which must be timely paid as a Default Assessment.

**11.6 LIMITED COMMON ELEMENT DAMAGE.** In the event of damage or destruction of a Limited Common Element from any cause other than the negligence, misuse or tortious acts of an Owner or its Permittees, the then Owners of the Units to which the Limited Common Element is attributable shall bear the expense to repair or rebuild the Limited Common Element to its previous condition based on relative Limited Expense Sharing Ratios applicable to such Limited Common Element. An Owner shall bear the cost of repairing or replacing such damage to the extent it was caused by such Owner's or its Permittees' negligence, misuse or tortious acts.

**11.7 OWNER'S NEGLIGENCE.** Notwithstanding anything to the contrary contained in this Declaration, in the event any damage to, destruction of or the need for Repair Work to the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner or its Permittees, or as a result of any improvement constructed by an Owner in or upon the Common Elements or within such Owner's Unit (with a determination of negligence or willful act or omission, and the amount of the Owner's liability therefor, having been made by the Board after a hearing with notice to the Owner), then the expenses, costs and fees incurred by the Association for such Repair Work shall constitute a Default Assessment of such Owner.

**11.8 BOARD CONSENT REQUIRED.** In performing Repair Work as required herein, no Owner shall make any addition or other alteration to any portion of the Common Elements, regardless of how minor, without the express written consent of the Board.

**11.9 UTILITIES FOR UNITS.** Each Owner shall contract directly with each provider of utility service providing service to or for benefit of the Owner's Unit except for water, sewer, and trash (including recycling). For water, sewer and trash and in the event that any other utility service is not separately metered or is otherwise not separately provided to Units, and is, instead, obtained for the Unit(s) by the Association, the Association will allocate the costs of such service to the Unit(s) receiving the service based upon reasonable estimates of use, if reasonably feasible, pro rata based upon Expense Sharing Ratios or the number of Units involved or as otherwise may be reasonable and appropriate under the circumstances. In the event an Owner fails to pay to the Association any utility costs as allocated by the Association within ten (10) days from receipt of the billing therefor, such Owner shall be liable to the Association for the cost of the utilities as well as any late payment charges incurred by the Association as a result of the Owner's failure to pay the Association, and the

Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association and charge such Owner responsible as a Default Assessment.

## **ARTICLE 12 MECHANIC'S LIENS**

**12.1 NO LIABILITY.** No labor or service performed or materials or products furnished and incorporated in a Unit shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the work or against the Common Elements. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, subcontractors, laborers, materialmen and other persons furnishing labor or materials to its Unit.

**12.2 INDEMNIFICATION.** To the fullest extent permitted by law, each Owner shall indemnify, defend and hold harmless each of the other Owners, Managing Agent and the Association from and against all liability or loss, including reasonable attorneys' fees, arising from the claim of any lien against the Unit of any other Owner or against the Common Elements (whether or not such lien or order is valid or enforceable as such) for construction performed or for labor, materials, services, or equipment supplied in connection with Improvements, repair or maintenance to the indemnifying Owner's Unit. In the event that any contractor, subcontractor, materialman, laborer, or any other person or entity files a mechanics' or similar type of lien that burdens or encumbers any portion of the Common Elements (except that undivided interest allocable to the Owner's Unit), or any other Unit not wholly owned by the Owner of the Unit in which such labor, materials, services, or products are incorporated, the Owner of the Unit in which such work was incorporated shall, within thirty (30) days of the filing of such lien of record, either have such lien removed or post a bond for the benefit of the Association and affected Owners in an amount not less than 150% of the amount claimed by any such person or entity claiming such lien. Such bond shall be sufficient to satisfy the requirements of Colo. Rev. Stat. § 38-22-132 (or any successor provision) to remove the lien from the real property.

**12.3 ASSOCIATION ACTION.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien shall attach to or be enforceable against an individual Unit or Units.

## **ARTICLE 13 RESTRICTIVE COVENANTS**

**13.1 COMPLIANCE WITH LAWS.** Each Owner shall comply with all applicable laws, ordinances, codes, order, and regulations of all governmental bodies having jurisdiction over the Project. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same.

**13.2 COMPLIANCE WITH ASSOCIATION DOCUMENTS.** Each Owner shall comply strictly with and shall require his or her Permittees to comply strictly with, all of the provisions of this Declaration, the Articles and the Bylaws, the Rules, the Policies, the Design Guidelines, if any, and the decisions and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully

{00680700.DOCX:3}

amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Board in the name of the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

**13.3 VAIL DEED RESTRICTION.** In addition to the restrictions on use and occupancy set forth above, each Unit other than the Transit Unit is also subject to either a Deed Restriction Agreement for the Occupancy and Transfer of Timber Ridge Neighborhood Residential Dwelling Units (Employer Units) or Deed Restriction Agreement for the Occupancy and Transfer of Timber Ridge Neighborhood Residential Dwelling Units (Employee Units) (in either case, the "***Deed Restriction***") with the Town pursuant to which the occupancy, use and resale of the Units are restricted. The Deed Restriction provides that the Units shall be subject to guidelines adopted by the Town from time to time. Enforcement and modification of the Deed Restriction is a matter between the Owners of Units and the Town.

**13.4 PROPERTY TO BE MAINTAINED.** Each Owner shall at all times maintain its Unit in a manner consistent with the standard of first- class residential real estate properties of comparable size in the Town. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Units so that same are visible from any neighboring Unit or street, except as necessary during any period of construction. No unsightliness or waste shall be permitted on or in any part of a Unit.

**13.5 NO NUISANCES, OFFENSIVE, HAZARDOUS, OR ANNOYING ACTIVITIES.** No nuisances or offensive activity shall be permitted on any part of the Project nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause unreasonable embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Project that is or might be unreasonably unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No odor shall be emitted on any part of the Project that is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no firearms shall be discharged within any part of the Project (including the Units) and no open fires shall be lighted or permitted within the Project. Further, no Hazardous Materials or chemicals shall at any time be located, kept or stored in, on the Common Elements or in any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property, provided that such products and substances are stored, used, transported and disposed of strictly in accordance with all applicable Environmental Laws. In no event shall the items set forth herein be deemed to be a complete list of nuisance or offensive activities prohibited hereunder, and the Board shall have the right to pursue prompt termination of any other nuisance or otherwise offensive activity carried on by an Owner in violation of the provisions hereof. As used herein, the term "nuisance" shall not include any activities of Declarant that are reasonably necessary to the development and construction of, and sales activities in, the Project.

**13.6 UTILITY SYSTEMS.** Each Unit's Utility systems shall be operated and maintained efficiently and in a manner that does not place undue operating, maintenance, repair or replacement costs on the mechanical and utility systems of another Unit or the Common Elements.

**13.7 RESIDENTIAL PURPOSES.** All Units (other than the Transit Unit) shall be used for residential purposes only, including uses that are customarily incident thereto and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may

{00680700.DOCX:3}

use his or her Unit for a professional or home occupation so long as the business is clearly secondary to the residential use of such Unit, the applicable zoning permits (including any home occupation requirements of the Town), such use, such use is lawful in nature, there is no external evidence thereof (by sight, sound, smell or otherwise), the business does not result in an undue volume of traffic or parking within the Community, as determined by the Board in its sole discretion from time to time, no unreasonable inconvenience to other residents of Units is created thereby, and the business conforms to any Rules that may be imposed by the Board from time to time on a uniform basis. In addition, notwithstanding the foregoing, any Managing Agent hired by the Association to manage the Project may also conduct such management activities from within a residential Unit.

**13.8 DECLARANT'S USE.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, assigns and representatives, to perform such reasonable activities, and to maintain upon portions of the Project such facilities as Declarant deems reasonably necessary, convenient or incidental to the completion and sale of the Units. Without limiting the generality of the foregoing, Declarant may maintain management offices, storage areas, signs, model units, sales offices, parking areas and lighting facilities. Declarant expressly reserves the right to locate any sales office, management office, or models within any Unit owned by Declarant and designated from time to time. The rights retained by Declarant in this Section 13.7 shall terminate upon conveyance by Declarant of all of the Units to Owners other than Declarant or twenty (20) years after the recording of this Declaration, whichever occurs first.

**13.9 LEASING OF UNITS.** The Transit Unit may not be leased. Subject to the restrictions on leasing set forth in the Deed Restriction and the remaining provisions of this Section 13.9, an Owner of any other Unit shall have the right to lease its Unit (or a room located within its Unit) upon such terms and conditions as the Owner may deem advisable; provided, however, that (a) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's Rules and Policies are provided to the lessee with the lease; (b) Units may be leased only for the residential uses provided herein; (c) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision; and (d) any Owner who leases his or her Unit shall, within three days after the execution of such lease, forward a copy of the same to the Association. In order to assure Unit Owners of eligibility of the Project for any Agency financing, the Association may adopt Rules with respect to rental of Units to non-Owners.

**13.10 USE OF COMMON ELEMENTS.** Each Owner and Owner's Permittees may use the Limited Common Elements allocated to the Owner's Unit and the General Common Elements in accordance with the purpose for which they are intended. The Board may adopt Rules or Policies governing or restricting the use of the Common Elements. Each Owner and Owner's Permittees, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to its Unit, agrees to be bound by any such adopted Rules or Policies. No Owner or its Permittees shall cause, or further, an obstruction of the Common Elements, nor, subject to anything in the Rules, shall anything be stored on any part of the Common Elements, without prior written consent of the Board. No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat may be performed or conducted on any of the Property. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

**13.11 PROHIBITION AGAINST TIMESHARING, HOUSE EXCHANGE AND RENTAL POOLS.** No Owner of any Unit shall offer or sell any interest in such Unit under a “timesharing” or “interval ownership” plan, or any similar plan, nor shall a Unit be dedicated to an exchange program that provides for recurring occupancies by different persons for durations of less than one year. Rental pool and condominium hotel arrangements that allow an Owner to put his or her Unit into a rental pool for Declarant or the Association to rent out and collect income while an Owner is not living in the Unit are prohibited.

**13.12 RESTRICTIONS CONCERNING PARKING AND VEHICLES.**

**13.12.1 *Parking Spaces.*** All parking spaces within the Project may only be used for vehicular parking, bicycle parking and utility functions in accordance with applicable provisions of this Declaration and reasonable Rules (including parking stickers, other identification, fines and security measures) established from time to time by the Association.

**13.12.2 *Abandoned or Stored Vehicles.*** No abandoned or inoperable vehicle of any kind shall be stored or parked on any of the Common Elements. An “***abandoned or inoperable vehicle***” shall be defined as any vehicle that is not capable of being driven under its own propulsion or does not have current registration. Stored vehicles are also prohibited from being parked on the Project. For purposes hereof, a vehicle shall be considered “***stored***” if it remains on the Project without being driven for thirty (30) consecutive days or longer without prior written Board permission. Boats, trailers, snow mobiles, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, large recreational vehicles (Class A and Class C RVs and motor homes), are also prohibited from being parked on the Project, except in areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the General Common Elements during normal business hours for the purpose of serving any Unit or Common Element; provided, however, that no such vehicle shall remain on the General Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

**13.12.3 *Right to Tow Vehicles.*** If any vehicle is parked on any portion of the Project in violation of this subsection 13.12.1 or in violation of the Rules, the Board, Managing Agent or other agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board, Managing Agent or other agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner’s exclusive Parking Space or Unit, is obstructing the flow of traffic, is parked in a Parking Space that has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the Board, Managing Agent or other agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subsection 13.12.3, neither the Association nor the Managing Agent nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding



anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

**13.13 RULES AND REGULATIONS.** In addition to the other restrictions set forth in this Article 13 and the Rules adopted by the Board from time to time, the Unit Owners shall also comply with the following rules and regulations:

**13.13.1 Household Pets.** Household pets (meaning cats, dogs, hamsters, songbirds, aquarium fish and similar animals commonly owned as pets) are permitted in the Units, provided that (i) no more than two dogs and/or two cats (but limited to a combined total of three pets per Unit) may be kept in a Unit, except that a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds) may be kept in a Unit, (ii) each Owner of a household pet shall clean up after such pet and ensure that such pet does not damage or soil the Common Elements, (iii) pets shall not be permitted anywhere in the Community other than within Units and those Common Elements necessary to provide ingress and egress to and from Units (e.g., hallways and stairways); and (iv) the Association (or the Board) shall have the authority to promulgate reasonable regulations regarding the keeping of pets in a Unit, including regulations regarding the type/species and size of pets permissible, and procedures regarding resolution of nuisance claims by Owners regarding pets. Such regulations may supplement, but not supersede the provisions set forth in this Section 13.13.1. Notwithstanding the foregoing, invitees and visitors of Owners are expressly prohibited from having household pets in the Units or anywhere within the Community. In addition, no fish tank more than thirty (30) gallons in size shall be installed, kept, or used in a Unit without the prior approval of the Board. An Owner of a Unit containing pets shall be responsible for all claims, damages, costs and expenses incurred by the Association (or any other Unit Owner) as a result of the pet(s) contained or residing in such Unit.

**13.13.2 Damage to Property.** If, due to the act or neglect of an Owner or Owner's Permittees, loss or damage shall occur or be caused to any person or property other than such Owner's Unit, such Owner or Owner's Permittees shall be liable and responsible for the payment of same. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

**13.13.3 Rubbish, Trash, and Garbage.** All rubbish, trash, garbage or other refuse and recycling (collectively, "**Trash**") shall be kept in a fully enclosed area. Trash shall be regularly removed from the Unit and shall not be allowed to accumulate therein. Each Unit at all times shall be kept in a clean, sightly and wholesome condition. No Trash shall be placed on the Common Elements outside the Unit, temporarily or otherwise, and shall be moved to the Project trash facilities for collection or otherwise removed from the Project by an Owner or its Permittees. The Board may require any Owner to arrange for trash removal of excessive amounts of Trash.

**13.13.4 Satellite Dishes.** All satellite dishes, satellites and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit or a Limited Common Element under the exclusive control of an Owner unless first approved by the Board in conformance with applicable local ordinances and federal law.

13.13.5 *Life Safety, Snow Management, or Cold Weather Management Systems.* Owners and Permittees shall not tamper with or disengage any portion of the life-safety, snow management or cold weather management (e.g. heat tape) systems that serve the Project, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

13.13.6 *American Flags, Service Flags and Political Signs.* American flags, service flags and political signs shall be permitted within the Community in accordance with the requirements of Section 106.5 of the Act.

13.13.7 *Noise.* Alteration, penetration or attachment of fixtures to the interior walls or ceiling of a Unit could result in degradation of the designed noise attenuation between Units. Therefore, no alteration, penetration (such as recessed lights) or attachment of fixtures (other than standard picture wall hanging hooks or brackets) may be made to the interior surfaces of Unit walls or ceilings without the prior written approval of the Board.

13.14 **ADDITIONAL RESTRICTIONS.** In addition to the restrictions on use and occupancy set forth above, the Association shall have and may exercise the right to control Owners' use and occupancy of their respective Units and the Common Elements in any reasonable and lawful manner approved by the Board, including the promulgation of Rules.

## **ARTICLE 14 DAMAGE OR DESTRUCTION**

14.1 **ASSOCIATION AS ATTORNEY-IN-FACT.** For the purpose of providing for the Common Elements, each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of: (a) granting easements pursuant to the Association's authority to do so, as provided herein; (b) purchasing and maintaining insurance required to be maintained by the Association pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain such insurance, as well as dealing with any Improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in this Article 14; and (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 15 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner that may be necessary to exercise the powers granted to the Association pursuant to this Article 14.

14.2 **THE ROLE OF THE BOARD.** Except as otherwise provided in Section 10.4, in the event of damage to, or destruction of, all or part of any Improvement covered by insurance written in the name of the Association pursuant to Article 10, the Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "*Association-Insured Property*").

**14.3 ESTIMATE OF DAMAGES OR DESTRUCTION.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board shall obtain an estimate or estimates that it deems reliable and complete for the costs of repair and reconstruction. “Repair and reconstruction” or “repair and reconstruct” as used in this Article 14 shall mean restoring the damaged or destroyed Improvements (excluding any that are not to be rebuilt pursuant to Section 10.4) to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board or the insurance trustee, if any, determines to be necessary.

**14.4 REPAIR AND RECONSTRUCTION.** As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

**14.5 DAMAGE OR DESTRUCTION TO UNITS.** Subject to the availability and sufficiency of insurance proceeds for such purpose, and subject to the Association completing Repair Work to associated Association-Insured Property, any portion of a Unit for which insurance is required to be carried hereunder and that is damaged or destroyed must be repaired and reconstructed promptly by the Owner or Owners of the damaged or destroyed Unit unless:

- (a) the common interest community created by this Declaration is terminated in accordance with Section 19.2 below;
- (b) repair or reconstruction would be illegal pursuant to any state or local statute or ordinance governing health or safety;
- (c) there is an affirmative vote not to rebuild by: (i) the Requisite Percentage of the Owners and First Mortgagees; (ii) every Owner of a Unit (or a Limited Common Element allocated to such Unit) that will not be rebuilt; and (iii) every Owner of a Unit that depends for structural support on the damaged or destroyed Unit; or
- (d) prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Unit rightfully demands all or a substantial part of the insurance proceeds.

**14.6 INSUFFICIENT INSURANCE PROCEEDS.** If the insurance proceeds are insufficient to repair and reconstruct the damaged or destroyed Improvements, the Owners may elect, by affirmative vote as provided in Section 14.5(c) above, to: (a) repair and reconstruct only so much of such damage or destruction of the damaged or destroyed Units or Common Elements as the amount of insurance proceeds will permit; or (b) take such other action as such Owners may approve.

**14.7 ASSOCIATION REMEDIES.** In the event an Owner fails to repair or reconstruct all or any portion of the Project for which such Owner is responsible to its condition immediately prior to its damage, destruction or partial condemnation pursuant to the requirements of this Article 14 or Article 15, the Association shall have the following remedies (in addition to any other remedies

{00680700.DOCX:3}

available to the Association or the Owners at law or in equity): (a) rebuild the affected portion of the Project to its condition immediately prior to its damage; or (b) subject to prior written approval of the non-defaulting Owners and their First Mortgagees, rebuild only that portion of the Project within the defaulting Owner's Unit (and any allotted Common Elements) necessary or appropriate to permit the reconstruction, use, and operation of the other Owners' Units (including rebuilding the Utilities that are necessary or appropriate for the continued operation of the other Units). The Association shall not exercise its remedies unless an Owner has failed to provide the Association with adequate assurances that the Owner will commence rebuilding as required by this Section 14.7 within thirty (30) days after notice from the Association.

## **ARTICLE 15 CONDEMNATION**

**15.1 RIGHTS OF OWNERS.** Whenever all or any part of the Common Elements shall be taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Board acting as attorney-in-fact for all Owners in accordance with instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**15.2 PARTIAL CONDEMNATION; DISTRIBUTION OF AWARD: RECONSTRUCTION.** The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required by the Act, the award shall be disbursed as set forth, as follows:

(a) if the taking involves a portion of the Common Elements on which Improvements have been constructed, then, unless within sixty (60) days after such taking, Owners who hold at least sixty-seven percent (67%) of the Voting Interests, and Declarant during the Period of Declarant Control, shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board (and if such Improvements are to be repaired or restored, the provisions in Article 10 above regarding the disbursement of funds with respect to casualty damage or destruction that is to be repaired shall apply); and

(b) if the taking does not involve any Improvements on the Common Elements, if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to augment its working capital reserves or to offset future expenses of the Association.

**15.3 COMPLETE CONDEMNATION.** If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the common interest community created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in the Nonprofit Act upon liquidation of the Association.

## **ARTICLE 16**

### **RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

**16.1 RESERVATION OF DEVELOPMENT RIGHTS.** Provided Declarant complies with all requirements of the Town associated with such rights, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to exercise the following Development Rights within the Project to: (a) create Units (subject to Section 4.9 above) and Common Elements (including General and Limited Common Elements) within the Property (including the Expansion Area or any portion thereof); (b) subdivide, re-subdivide or combine Units; (c) convert Units into Common Elements; and (d) allocate and reallocate Parking Spaces and Storage Areas as Limited Common Elements appurtenant to specific Units within the Community. Neither the Association nor any Owner may take any action or adopt any rule or restriction that will interfere with or diminish any Special Declarant Right, including any Development Right, without the prior written consent of the Declarant.

**16.2 RESERVED DEVELOPMENT RIGHTS OF ANNEXATION AND EXPANSION.** Declarant also reserves the right for itself and any Successor Declarant at any time and from time to time, without consent of the Association or any Owner or First Mortgagee being required, to subject additional phases of property to the provisions of this Declaration.

**16.2.1 Amendments to Declaration and Map.** Such annexation and expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more amendments to the Declaration or the Map setting forth the Units and other real property, if any, to be annexed to the Community and included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The annexation and expansion may be accomplished in stages by successive supplements or in one supplemental document. Declarant may exercise such rights for expansion on all or any portion of other property owned by Declarant in whatever order of development Declarant, in its sole discretion, determines. All Improvements to be constructed on such other property shall be substantially completed prior to the recording of the amendments adding additional Units and the Improvements shall be consistent with the Units hereby submitted to this Declaration in structure, type and quality of construction. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

**16.2.2 Expansion of Definitions.** In the event of such annexation and expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" or "Units" shall mean the Units as shown on Map plus any additional Units added by any amendments, and reference to this Declaration shall mean this Declaration as amended. In addition, Declarant may add definitions as necessary and appropriate to continue the general concepts contained in the Declaration with respect to the Units created by such annexation and expansion. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

**16.2.3 Declaration Operative on Other Property.** Units added by amendments to the Declaration and Map shall be subject to all of the terms and conditions of this Declaration, upon recording the amendments depicting such other property with the Clerk and Recorder. In the event that a portion of such other property is submitted to the provisions of this Declaration,

Declarants shall retain the right to, but shall not be obligated to, submit any additional portion of such other property to the provisions of this Declaration. The rights of Declarants and any Successor Declarant, as described herein, shall apply to all Units that are added to this Declaration in accordance with these provisions relating to enlargement thereof. No rights or obligations of any character in such other property shall attach until amendments to the Declaration and Map are filed with the Clerk and Recorder annexing the Units constructed in such area to this Community.

16.2.4 *Effect on Expansion.* Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in other property owned by Declarants and included by an amendment) shall remain fully liable with respect to its obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Elements, costs and fees, if any. The recording of an amendment shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

16.2.5 *Right to Clarify.* Declarant also reserves the right, from time to time, to record one or more documents in order to clarify the effect of any expansion(s), including any matters contained in Sections 16.2.1, 16.2.2, 16.2.3 and/or 16.2.4. Each such document(s), if any such document(s) are recorded by Declarant in its discretion, may state the legal description(s) of any property that has been included in the expansion, and may include such other provisions which a Declarant, in its discretion, may determine in order to clarify any matter having to do with annexation of such property to this Declaration.

16.2.6 *Withdrawal Right.* The Expansion Area depicted on the Map and each portion of the Community that is annexed to this Declaration by Declarant shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with the Act. However, Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, no later than automatic termination of Declarant's rights as provided in Section 16.15 below.

**16.3 RIGHT TO DESIGNATE SITES FOR GOVERNMENTAL AND PUBLIC INTERESTS.** During the Special Declarant Rights Period (as defined below), Declarant may designate areas within the Community that are owned by Declarant for government, education, or religious activities and interests, including fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, commercial and other public facilities subject to receiving all necessary approvals.

**16.4 RIGHT TO APPROVE ADDITIONAL COVENANTS.** During the Special Declarant Rights Period, no person or entity shall record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant review and written consent. Any instrument recorded without such consent shall be void and of no force or effect unless subsequently approved by written consent, signed by Declarant, and recorded.

**16.5 RIGHT TO APPROVE CHANGES IN THE RESTRICTIONS AND RULES AND REGULATIONS.** During the Special Declarant Rights Period, no amendment to or modification of

any use restrictions or Rules or Policies shall be effective without prior notice to, and the written approval of, Declarant.

**16.6 RIGHT TO TRANSFER OR ASSIGN DECLARANT RIGHTS.** Any or all of the Special Declarant Rights may be transferred in whole or in part by the Declarant to other persons or entities; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant and the person or entity to whom the rights are transferred or assigned.

**16.7 TRADEMARKS.** Any use by the Association of names, marks, or symbols of Declarant, or any of its affiliates (collectively “*Declarant Marks*”) shall inure to the benefit of Declarant and shall be subject to Declarant periodic review for quality control. The Association may enter into license agreements with Declarant, terminable with or without cause and in a form specified by Declarant in its sole discretion, with respect to permissive use of certain Declarant Marks. The Association shall not use any Declarant Marks without Declarant’s prior written consent.

**16.8 EQUAL TREATMENT.** During the Special Declarant Rights Period, neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and/or affiliates or its personnel and/or guests, including visitors, to the Common Elements or to any property owned by it;

(b) limits or prevents Declarant, its successors, assigns, and/or affiliates or its personnel from advertising, marketing, or using the Association or the Common Elements or any property owned by it in promotional materials;

(c) limits or prevents purchasers of Units, its successors, assigns, and/or affiliates in the Community from becoming members of the Association or enjoying full use of the Common Elements, subject to the membership provisions of this Declaration and the Bylaws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant. This provision shall expressly prohibit the establishment of a fee structure (i.e., Assessments, Special Assessments and other mandatory fees or charges) that discriminates against or singles out any group of Members or Declarant;

(e) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community. Policies, Rules or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

**16.9 NO INTERFERENCE WITH DECLARANT'S RIGHTS.** Neither the Association nor any other entity shall exercise its authority over the Common Elements (including, but not limited to, any means of access to the Community) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Community, or over the streets and other Common Elements within the Community.

**16.10 RIGHT TO USE COMMON AREA FOR SPECIAL EVENTS.** During the Special Declarant Rights Period, Declarant shall have the right to use all Common Elements, including amenity areas, to sponsor special events for charitable, philanthropic, and social purposes as determined by Declarant, in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by the Declarant;

(b) the Declarant utilizing such Common Element shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth herein) other than customary use charges that shall be waived;

(c) the Declarant utilizing such Common Element shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the applicable special event; and

(d) Declarant shall have the right to assign the rights contained in this Section 16.10 to charitable organizations or foundations selected by Declarant. The right of Declarant to use the Common Elements for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

**16.11 EASEMENT TO INSPECT AND RIGHT TO CORRECT.** Declarant reserves for itself and others it may designate an easement for the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition that may exist on any portion of the Community, including the Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner and no entry into a Unit shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, and pay for, any resulting damage.

**16.12 RIGHT TO NOTICE OF DESIGN OR CONSTRUCTION CLAIMS.** No person or entity shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or



pending claim, demand, or litigation against Declarant involving such design or construction unless Declarant have been first notified in writing at least ten (10) days prior to such inspection and given an opportunity to meet with the Owner and the Association and conduct an independent inspection.

**16.13 OTHER RESERVED RIGHTS.** Declarant also reserves the right for itself and any Successor Declarant, without consent of any Owner or First Mortgagee being required, at any time and from time to time to: (a) complete Improvements indicated on the plats and Map; (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units and within the Common Elements; (c) utilize Common Elements in connection with construction activities, provided that Declarant shall not unreasonably restrict or prohibit access to or utilization of an Owner's Unit or Limited Common Elements in connection with such construction activities; (d) merge or consolidate the Project with a common interest community of the same form of ownership; (e) appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control; (f) amend the Map to: (i) ensure that the language and all particulars used on the Map and contained in this Declaration are consistent; (ii) establish, vacate and relocate utility easements and access easements; (iii) establish, vacate and relocate Parking Spaces and Storage Areas, provided that if a Parking Space or Storage Areas has previously been allocated as a Limited Common Element to a particular Unit, the consent of the Owner and any First Mortgagee holding a lien encumbering any portion of such Unit shall be required in connection with the vacation or relocation of such Parking Space or Storage Area; (iv) establish certain Common Elements as Limited Common Elements in accordance with requirements set forth in the Act; (v) reflect the subdivision or combination of any Unit as provided by this Declaration; and (vi) as may be otherwise permitted by the Act; and (g) exercise any other Special Declarant Rights provided for in this Declaration.

**16.14 CHANGE IN EXPENSE SHARING RATIOS.** In the event Declarant or a Successor Declarant exercises the right to convert, subdivide, resubdivide, or combine Units as set forth above, the Expense Sharing Ratios of the resulting Units after such conversion, subdivision or combination shall be adjusted according to the formulas set forth in Section 9.2 above.

**16.15 TERMINATION OF RIGHTS.** Except for such longer period as is specifically set forth and provided in this Declaration, all Special Declarant Rights shall expire on the earlier to occur of: (a) the conveyance of the last Unit to an Owner who is not Declarant or a Successor Declarant; or (b) twenty (20) years from the date of recording this Declaration with the Clerk and Recorder (the "***Special Declarant Rights Period***"), unless such rights are: (i) extended as allowed by law; or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the rights by Declarant. Further, Declarant reserves the right, at any time, and from time to time, to surrender or terminate some or all of the Special Declarant Rights by recording a statement to that effect with the Clerk and Recorder. Notwithstanding the termination of the rights reserved to Declarant as provided herein, Declarant or a related party may continue to own Units in the Project. By virtue of such ownership, Declarant may continue to influence and impact operation of the Association through the exercise of its voting rights, including election of Board members and the possible appointment of persons related to Declarant to committees of the Board.

## **ARTICLE 17**

### **ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO COMMON ELEMENTS**

#### **17.1 ALTERATIONS, ADDITIONS OR IMPROVEMENTS .**

17.1.1 Common Elements. Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to the Common Elements of any kind (including change in color, texture, street number, signage, doors or windows), or that in any manner affect the Common Elements (including installation of air conditioning units, spas, fireplaces, built-in cabinetry, skylights, and moving or removing structural walls or columns), shall be made unless and until the Board has approved the same and Plans shall have been submitted to and approved by the Board. Declarant shall be exempt from any requirement to obtain any approvals pursuant to the provisions of this Article 17 until termination or expiration of Declarant's Special Declarant Rights pursuant to Section 16.15 above. Notwithstanding anything in this Section 17.1.1 to the contrary, an Owner may repaint or refinish the surface of any Common Element that is interior to that Unit.

17.1.2 Units. No Owner shall undertake any work in or around a Unit that would jeopardize the structural integrity, soundness, safety, or operation of any Unit, any Common Element or the Project or impair an easement thereon. In addition, no Owner shall undertake any work in or around a Unit that would jeopardize the water intrusion barriers or sound transmission coefficient rating of any wall assembly or partition within the Project. No Owner shall make any material modifications to the exterior of a Unit or to any Utilities that serve more than such Owner's Unit, until and unless Plans shall have been submitted to and approved by (a) the Board, (b) First Mortgagees, to the extent required by any First Mortgages encumbering affected Units, and (c) to the extent Town approval is required, the Town.

17.2 **GOVERNMENTAL APPROVAL**. If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided that either: (a) approval has been given by the Board; or (b) such application is made by Declarant during the Period of Declarant Control, then the application shall be executed on behalf of the Association by an authorized officer of the Association, provided further that no liability shall arise on the part of the Board, the Association or any of them to any contractor, subcontractor or materialman on account of such alteration, addition or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

#### **17.3 ARCHITECTURAL CONTROL.**

17.3.1 *Architectural Review*. The Board shall be responsible for establishment and administration of architectural, design, window covering and or lighting guidelines (collectively, the "***Design Guidelines***") and review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Common Elements (whether General Common Elements or Limited Common Elements) or Units, as provided herein.

17.3.2 *Approval of Additions or Modifications* . The Plans shall be prepared by reputable architects and engineers experienced in the design of structures similar to the Project. The Board may refuse to approve any Plans that adversely affect another Unit, the Common Elements or the Project. In passing upon such Plans, the Board shall consider the suitability of the proposed improvement, the materials of which the proposed improvement is to be constructed, and the effect of

{00680700.DOCX:3}

the proposed improvements on the soundness, safety, operation, and value of the Project. All such projects shall be performed by reputable contractors experienced in the construction of structures similar to the improvements proposed. The contractors shall carry general liability insurance in such types and amounts as the Association reasonably determines and shall provide the Association with a certificate of insurance evidencing such insurance and naming the Association, Owners, and First Mortgagees as additional insureds. Each Owner shall obtain such other insurance during any period of construction covering such risks and in such amounts as is prudent under the circumstances, including builder's risk insurance.

17.3.3 *Approval of Plans.* The Board shall vote to approve or disapprove Plans (including resubmission of disapproved Plans that have been revised) within sixty (60) days after submission of all required information. Any disapproval by the Board shall be in writing and shall set forth in reasonable detail the nature of the disapproval. If the Board fails to respond in such 60-day period, it shall be deemed to have approved the Plans. The costs and expenses incurred by the Board in obtaining professional review or assistance shall be borne by the Owner submitting Plans.

17.3.4 *Liability for Plans.* Neither the Association nor the Board shall be liable in damages to anyone submitting Plans for approval or to any Owner by reason of mistake in judgment, negligence, gross negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any Plans or in connection with the enforcement of the covenants contained in this Section 17.3. Every Owner who submits Plans for approval agrees that: (a) it will not bring any action or suit against the Association or the Board to recover damages in connection with the submission of such Plans for approval, whether such Plans are approved or disapproved; and (b) it will indemnify and hold harmless Association and Board in connection with any action or suit brought by a third party in connection with such Plans. Such indemnification will include all costs of defense. Approval by the Board shall not be deemed to constitute any representation or assurance of compliance with the requirements of any applicable laws, including local building codes; it shall be the sole responsibility of the Owner or other person submitting Plans to comply therewith.

#### 17.4 **SOLAR PANEL INSTALLATION.**

17.4.1 *Installation of Solar Equipment.* It is the Declarant's intention to install solar energy generating equipment, including, but not limited to solar panels, supports and joists to hold the solar panels, electrical distribution, collection, transmission and communications lines, electrical panels and junction boxes ("**Solar Equipment**") upon the roofs of all Buildings within the Project.

17.4.2 *Maintenance of Solar Equipment.* The Association shall maintain and operate the Solar Equipment in compliance with all federal, state and local laws and regulations, and the cost and expense for such maintenance and operation shall be a General Common Expense allocated among all Units. Unit Owners acknowledge that power generation technology is improving at a rapid rate and the Association from time to time may (but shall not be obligated to) replace or repair Solar Equipment on a Building roof with newer (and potentially smaller) models and types of Solar Equipment.

17.4.3 *Taxes.* The Association shall pay all taxes, assessments, or other governmental charges, general and specific, including possessory interest real estate taxes ("**Taxes**"), that shall or may during the Term be imposed on, or arise in connection with the Solar Equipment located within the Project, which Taxes shall be passed through to Owners as General Common Expenses. The Association and Owners agree to reasonably cooperate to update county tax records to ensure that the Association receives tax assessments and bills associated with the applicable Solar Equipment.

17.4.4 *Insurance.* The Association shall be responsible for maintaining insurance coverages as would be customary and reasonable for similarly situated properties with Solar Equipment, including, without limitation, adequate coverage to cover any personal injuries or accidents that could reasonably be expected as a direct result of the Solar Equipment being located upon the roof.

**17.5 ASSOCIATION RIGHT TO REMOVE UNAUTHORIZED ALTERATIONS, ADDITIONS OR IMPROVEMENTS.** The Association, upon the majority approval by the Board and after reasonable notice to the Owner of the offending Unit, may remove any alterations, additions or Improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal.

## **ARTICLE 18 MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of Agencies and holders, insurers or guarantors of First Mortgages. To the extent permitted by Colorado law and as applicable, necessary or proper, the provisions of this Article apply to this Declaration, the Articles, Bylaws, the Rules, the Design Guidelines and the Policies of the Association.

**18.1 TITLE TAKEN BY FIRST MORTGAGEE.** Any First Mortgagee of record against a Unit that obtains title to a Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable from and after the date title to the Unit is acquired.

**18.2 DISTRIBUTION OF INSURANCE OR CONDEMNATION PROCEEDS.** To the extent any insurance proceeds or condemnation awards are to be distributed among Owners of Units (as opposed to being paid to the Association or a trust designated by the Association) for losses to, or taking of, all or part of any such Units or the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee against the Unit as to which such distribution is made.

**18.3 RIGHT TO PAY TAXES AND CHARGES.** First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**18.4 FINANCIAL STATEMENT.** Upon written request from any Agency or First Mortgagee, the Association shall deliver to such Agency or First Mortgagee a copy of the most recent financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or First Mortgagee. If an audited financial statement is unavailable, the First Mortgagee or Agency may have one prepared at its expense.

**18.5 NOTICE OF ACTION.** Any First Mortgagee and any Agency that holds, insures or guarantees a First Mortgage, upon written request to the Association (which request shall include the

First Mortgagee's or Agency's name and address and the subject Unit's identifying number), will be entitled to timely written notice of:

(a) if affecting the subject Unit, any proposed amendment of the Association Documents effecting a change in: (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interest in the Common Elements allocated to the Unit (excluding changes resulting from the exercise of Special Declarant Rights) or the liability of Assessments relating thereto; (iii) the number of votes in the Association relating to any Unit; or (iv) the purposes to which any Unit or the Common Elements are restricted;

(b) any amendment set forth in Sections 19.3 below;

(c) any proposed termination of the common interest community;

(d) any condemnation loss or any casualty loss that affects a material portion of the Project or that affects any Unit on which such First Mortgagee or Agency holds, insures or guarantees a First Mortgage;

(e) any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage when such delinquency has continued for a period of sixty (60) days;

(f) any lapse, cancellation or material modification of any casualty insurance policy maintained by the Association pursuant to Article 10; and

(g) any proposed action that requires the consent of a specified percentage of Mortgagees.

**18.6 ACTION BY MORTGAGEE.** If this Declaration or the Association Documents require the approval of any Agency or Mortgagees then, if any Agency or Mortgagee fails to respond to any written proposal for such approval within sixty (60) days after such Agency or Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Agency or Mortgagee shall be deemed to have approved such proposal, provided that the notice was delivered to the Agency or Mortgagee by certified or registered mail, return receipt requested.

## **ARTICLE 19**

### **DURATION OF COVENANTS AND AMENDMENT**

**19.1 TERM.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of applicable law and as set forth in Section 19.2 below.

**19.2 TERMINATION.** By vote or agreement of (a) Owners holding sixty-seven percent (67%) or more of the Voting Interests; and (b) First Mortgagees holding mortgages on sixty-seven percent (67%) or more of the Units encumbered by mortgages, Owners may vote that the Units are obsolete and that the Project should be terminated. In such instance, the Association shall record a notice setting forth such fact or facts signed by the relevant Owners and Mortgagees, and upon the recording of such notice (the date of such recording referred to as the "**Termination Date**"), the entire premises shall thereafter be free and clear of the provisions contained in this Declaration, the Map and the Association Documents. Promptly following the Termination Date, the Association shall proceed

{00680700.DOCX:3}

to liquidate and distribute its assets and Common Elements to the Owners according to the procedure set forth in the Act and the Nonprofit Act.

### 19.3 AMENDMENT.

19.3.1 Except as otherwise provided in this Declaration, this Declaration, or any provision herein, may be amended at any time by vote or agreement of Owners holding sixty-seven percent (67%) or more of the Voting Interests, provided that approval by the Requisite Percentage of Owners and First Mortgagees shall be required if the amendment to the Association Documents adds or deletes any material provisions that establish, provide for, govern or regulate any of the following:

- (a) reserves for maintenance or repair and replacement of the Common Elements;
- (b) Hazard Insurance or fidelity insurance requirements;
- (c) responsibility for maintenance and repair of the Project;
- (d) expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community other than as set forth in this Declaration;
- (e) boundaries of any Unit, except to the extent related to the exercise of a Special Declarant Right;
- (f) convertibility of Units into Common Elements, except as provided herein;
- (g) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey its Unit;
- (h) establishment of self-management by the Association where professional management has been required by any Agency or First Mortgagee;
- (i) any provision that is for the express benefit of an Agency or First Mortgagee regardless of whether the amendment is material; and
- (j) restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

19.3.2 Approval by the Requisite Percentage of Owners and First Mortgagees shall be required if the amendment to the Association Document adds or deletes any material provisions that establish, provide for, govern or regulate any of the following:

- (a) voting;
- (b) an increase in General Assessments by more than twenty-five percent (25%) of the previously assessed amount, Assessment liens or subordination of such liens;

(c) reallocation of Expense Sharing Ratios, or rights to use or control the Common Elements other than as provided herein; and

(d) imposition of any restrictions on the leasing of Units other than the restrictions set forth herein or as otherwise required by applicable laws, ordinances, codes, order, or regulations of any governmental body having jurisdiction over the Project.

19.4 **EXECUTION OF AMENDMENT.** Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted by this Declaration and the Act.

## **ARTICLE 20 INDEMNIFICATION**

To the extent: (a) permitted by applicable law; and (b) not covered by the insurance required pursuant to Article 10 above, each Owner (“**Indemnifying Owner**”), by taking title to a Unit, is hereby deemed to covenant to indemnify, defend, and hold harmless the Association, each other Owner, its First Mortgagee, and each of their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an “**Indemnified Party**”) from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, operation, management or ownership (as applicable) by such Owner, or any of its Permittees over which it has contractual control, of its Unit or the Limited Common Elements or easement areas associated with such Unit, or the failure of such Owner to perform any obligation with respect to those Limited Common Elements or easement areas associated with such Owner’s Unit that such Owner is required to operate, maintain, and/or repair pursuant to the terms of this Declaration. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the Indemnified Party may seek indemnity pursuant to this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner’s expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents an

## **ENVIRONMENTAL PROVISIONS**

If any discharge, emission, or disposal of Hazardous Materials solely and directly attributable to any action or inaction by an Owner or its Permittees over which it has contractual control occurs with respect to the Project, such Owner shall, at its sole cost and expense, cause the cleanup and

remediation of any such discharge, emission or disposal of Hazardous Materials, if required by Environmental Laws in effect at such time. To the extent practical, such remediation shall not unreasonably interfere with the Owner's or its Permittees' use or occupancy of the affected Unit, the other Units or Common Elements.

## **ARTICLE 21 SPECIAL TAXING DISTRICTS**

SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY, AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

## **ARTICLE 22 OWNER ACKNOWLEDGEMENTS**

Each Owner, by purchasing a Unit, acknowledges, covenants and agrees that Owner has been made aware of the following matters affecting the Community and the Property and Owner's use and enjoyment thereof and accepts those matters as known conditions affecting the Unit:

**22.1 DECKS (USE AND CONSTRUCTION).** Owner acknowledges that the Limited Common Element allocated to its Unit as a deck, if any, has been constructed with concrete, which will crack and settle over time. Non-structural cracks, exposed aggregate, imperfections, fissures and other concrete finish variability are normal and Owner accepts that condition. Owner further acknowledges that use of the deck by Owner, including use of grills, patio furniture and clothes drying devices, is restricted as provided in the Rules adopted hereunder.

**22.2 NATURAL MATERIALS; CONCRETE, FLOORS, CABINETRY, GRANITE, TILE AND CEILINGS.** Owner acknowledges that the Unit and/or Common Elements contain natural materials that will vary in color, consistency and finish, and that these inconsistencies are inherent in natural materials. These inconsistencies are inherent and expected in columns, floors, cabinetry, granite, tile and ceilings throughout the Project, including areas within the Unit and Limited Common Elements allocated to a Unit. In addition, the Unit and/or Common Elements (including Limited Common Elements allocated to a Unit) have been constructed with concrete that will crack and settle over time. Non-structural cracks (including any hairline cracks that may exist in the concrete of the attached garages), exposed aggregate, imperfections, patches, blemishes, fissures and other concrete finish variability are normal, and Owner agrees that all such conditions are acceptable to Owner. Owner further acknowledges that window systems contract and expand as the weather warms and cools, which may result in "popping" noises. Owner acknowledges that such noises shall not constitute an interference or disruption to the use and quiet enjoyment of the Unit.



**22.3 NOISE TRANSMISSION.** Floor surface materials, particularly hardwood, concrete, and tile, within a Unit may transmit noise to other Units. Such noise is consistent with proper uses of a Unit, does not constitute a disruption to the use and quiet enjoyment of a Unit, and is accepted by Owner as an anticipated aspect of living in a Unit. Owner acknowledges that no representation has been made by Declarant or Association, or by agents, brokers or other representatives of Declarant or Association, that any Unit is or will be soundproof or that sound will not be transmitted from one Unit to another.

**22.4 SMOKING.** Owner acknowledges that smoking is permitted only within individual Units. Smoking is prohibited in and around all Common Elements, including hallways, lobby, Parking Spaces, Storage Areas and balconies or decks allocated as Limited Common Elements to individual Units. Owners who smoke within a Unit must keep their entry doors shut so as to not allow smoke to enter Common Elements.

**22.5 ROOF.** Owner acknowledges that snow will accumulate on portions of the roof system. In order to minimize water intrusion or penetration, it is necessary that Building roof systems, including the drainage system for same, be regularly maintained by parties responsible for such maintenance pursuant to this Declaration.

**22.6 NO VIEW EASEMENT.** There exists no easement or other right, express or implied, for the benefit of the Owner, the Unit, or the Project for light, view, or air contained in this Declaration, or any other binding agreement or instrument. Owner acknowledges that the view, light and air existing may be changed or eliminated by future events wholly outside the control of the Association.

**22.7 WALLS AND COLUMNS.** Owner acknowledges and agrees that, unless Owner has obtained the prior written approval of the Association, Owner may not penetrate the surfaces of perimeter walls or concrete columns or pillars located within the Unit for any reason. Owner acknowledges that such penetrations can damage the Unit or cause damage to another Unit.

**22.8 WINDOWS.** Owner acknowledges and agrees that Owner may not place any film on the surface of, or tint, any window surface in the Unit. Owner acknowledges and agrees that placing any film on the surface of, or tinting, any window will void any express or implied warranties resulting in loss and damage to the Association, the Project, and other Owners.

**22.9 STORAGE AREAS.** Each Owner and occupant of a Unit acknowledges that the Storage Areas may have support columns and other mechanical equipment located therein that may impact or affect the use and enjoyment of such Storage Areas.

**22.10 CONDENSATION/HUMIDITY.** The exterior window (and door) system is designed to mitigate the migration of cold from the outside environment to the interior of the Unit. In very cold conditions or in relatively high humidity within the Unit, condensation, frost, and ice may form on the windows, doors, or frames thereof, which moisture can cause various problems including damage to flooring, walls, and other property in contact with the moisture. Owner acknowledges and agrees that it is Owner's responsibility to maintain the humidity and temperature within the Unit within levels specified within the Owner Maintenance Manual and so as to avoid the formation of condensation on the windows.

**22.11 MOLD.** Mold, mildew, fungi and other microbiological organisms (collectively, “**Mold**”) are present in soil, air, building products and elsewhere in the environment. Mold can grow in various environments with moisture and organic materials such as building products. It is currently unclear whether, or the extent to which, Mold is a cause of potential health problems. Owner acknowledges that neither the Association nor Declarant is qualified or has undertaken to evaluate the role, if any, that Mold growth may have on indoor air quality. Owner acknowledges that there exists no representation or warranty, express or implied, regarding the current or future presence or absence of Mold in the Unit or any Common Elements in the vicinity of the Unit or in the Building. It is recommended that Owner, at its expense, perform such inspections as desired and consult with such experts or medical practitioners as desired regarding the occurrence and effects of Mold and the potential sensitivity Owner and Owner’s family members may have to Mold.

There is no practical way to eliminate all Mold from an indoor environment, but excessive Mold growth can be controlled by controlling moisture. When there is excessive moisture or water indoors, Mold growth can and will occur, particularly if the condition is not addressed. The Owner understands that the Owner is in a superior position to prevent Mold growth within the Unit or Limited Common Elements allocated to a Unit. As such, Owner agrees to maintain the Unit, including any Limited Common Elements allocated to the Unit, in such manner as to reduce the potential for Mold growth, including, without limitation, preventing and promptly repairing plumbing leaks, keeping dryer vents and fans clear and functioning, and controlling the humidity in the Unit to prevent condensation on windows and other surfaces. Owner agrees to perform periodic inspections of the Unit, including any Limited Common Elements allocated to the Unit, for the presence of Mold or conditions which may increase the likelihood of Mold growth and to monitor continually such areas for excessive moisture or water. If Owner discovers excessive moisture or water within the Unit, or any Limited Common Elements allocated to the Unit, Owner agrees to take necessary steps to immediately eliminate the source of water or moisture, recognizing that failing to do so can result in damage and Mold growth. Owner acknowledges that the Association and other Owners are relying upon Owner to perform the foregoing services in order to assure that the Unit and the Buildings as a whole function in the manner designed. Owner agrees to be fully and solely responsible for any liability or damage resulting from Owner’s failure to perform as agreed in this Section 22.11.

**22.12 SECURITY.** THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, MAY, BUT SHALL IN NO EVENT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS DIRECTLY OR INDIRECTLY TO IMPROVE SECURITY ON THE PROPERTY OR WITHIN THE PROJECT; HOWEVER, EACH OWNER, FOR HIMSELF/HERSELF/ITSELF AND HIS/HER/ITS PERMITTEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, IS NOT A PROVIDER OF SECURITY AND THAT SUCH PARTIES SHALL NOT HAVE A DUTY TO PROVIDE SECURITY ON THE PROPERTY OR WITHIN THE PROJECT. FURTHERMORE, THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY OR THE PROJECT AND COMMIT CRIMINAL ACTS ON THE PROPERTY OR WITHIN THE PROJECT. FURTHERMORE, THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, DOES NOT GUARANTEE THAT CRIMINAL ACTS ON THE PROPERTY OR THE PROJECT WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER AND OCCUPANT TO PROTECT HIS/HER/ITS PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH

SECURITY SHALL LIE SOLELY WITH EACH OWNER AND OCCUPANT. THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN, IF ANY, AND BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER WAIVES CLAIMS RELATED TO THE SAME.

## **ARTICLE 23 GENERAL PROVISIONS**

23.1 **SUPPLEMENT TO APPLICABLE LAW.** The provisions of this Declaration shall be in addition to and supplemental to all applicable provisions of law.

23.2 **CONVEYANCE OF UNITS.** All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration and the balance of the Association Documents, as each of them may be amended from time to time.

23.3 **ESTOPPEL CERTIFICATES.** Each Owner or the Association, as the case may be, shall, from time to time, within ten (10) days after receipt of written request from any other Owner or First Mortgagee execute, acknowledge and deliver to such other Owner, First Mortgagee, or its designee a certificate ("*Estoppel Certificate*") stating to the best of such Owner's knowledge, without inquiry:

(a) that the terms and provisions of this Declaration are unmodified and are in full force and effect, or, if modified, identifying any such modifications;

(b) whether there is any existing default hereunder by any other Owners or the Association and, if so, specifying the nature and extent thereof;

(c) whether there are any sums that the Owner executing such Estoppel Certificate is entitled to receive or demand from any of the other Owners, and if there is any such sum, specifying the nature and amount thereof and method of computation;

(d) in the case of the Association, confirmation of the current Budget, and whether there are any outstanding, unpaid Assessments, or currently proposed Assessments;

(e) whether an Owner or the Association has performed or is performing work, the cost of which is chargeable in whole or in part to any of the other Owners pursuant to the provisions hereof, but has not yet been charged to any such Owner, and if there be any such work, specifying the nature and extent thereof;

(f) the nature and extent of any set-offs, claims, counterclaims or defenses then being asserted, or otherwise known by an Owner or the Association against the enforcement of any other Owner's obligations hereunder;

(g) whether any Owner has requested that a matter be submitted to arbitration and the nature of any arbitration proceeding or finding made within ninety (90) days preceding the date of the Estoppel Certificate; and

{00680700.DOCX:3}

- (h) such other matters as may be reasonably requested.

**23.4 UNAVOIDABLE DELAY.** Neither the Association nor any Owner shall be deemed in default in the performance of any obligation required by the Association Documents other than an obligation to pay money, if and so long as the non-performance is directly caused by Unavoidable Delay. Such party's time for performance shall be extended during any period of Unavoidable Delay, provided that the party unable to perform shall promptly notify the party(ies) to whom the relevant obligation is owed of the existence of any Unavoidable Delay, shall periodically keep the notified party(ies) informed in writing of the status of the Unavoidable Delay and the performance of its obligation, and shall diligently pursue completion of performance.

**23.5 RESTRICTION ON DECLARANT POWERS.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted by applicable law. Any provision in this Declaration in conflict with the requirements of applicable law shall not be deemed invalid as a whole but shall be adjusted as is necessary to comply with applicable law.

**23.6 DECLARANT'S USE.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Units and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Units and development and construction of Improvements. The foregoing includes locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Unit or Common Elements, as designated in this Declaration or any other recorded document. Further, nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals:

23.6.1 to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

23.6.2 to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, or sales or leasing office in connection with the development, construction or sale of any property; and/or

23.6.3 to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

**23.7 LIMITATION ON LIABILITY.** The Association, the Board, Declarant, and each of their officers, directors, members, managers, partners, agents and employees, shall not be liable to any party for any action or for any failure to act unless the action or failure to act was in bad faith and was done or withheld with malice.

**23.8 NO REPRESENTATIONS, GUARANTIES OR WARRANTIES.** No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board, or by any of their officers, directors, members, managers, partners, agents or employees, AND ALL SUCH REPRESENTATIONS, GUARANTIES, AND

{00680700.DOCX:3}

WARRANTIES IN CONNECTION WITH ANY PORTION OF THE COMMUNITY, OR ANY IMPROVEMENT, INCLUDING, WITHOUT LIMITATION, ITS OR THEIR PHYSICAL CONDITION, STRUCTURAL INTEGRITY, FREEDOM FROM DEFECTS, FREEDOM FROM HAZARDOUS OR TOXIC MATERIALS, SUBSTANCES OR GASES, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR A PARTICULAR USE, OR VIEW, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, ARE HEREBY WAIVED IN THEIR ENTIRETY.

**23.9 DISCLAIMER REGARDING SAFETY.** DECLARANT, THE ASSOCIATION AND THE BOARD AND EACH OF THEIR OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION AND THE BOARD, AND EACH OF THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND POLICIES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY.

**23.10 WAIVER.** By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges the Declarant, the Association, and the Board, and each of their respective officers, directors, members, managers, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 23.6 through 23.9.

**23.11 ENFORCEMENT AND RIGHTS OF ACTION.**

**23.11.1 Enforcement.** Except as otherwise provided in this Declaration, the Association, the Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Likewise, the Association, the Board, Declarant or any Owner shall have the right to enforce compliance with any decision made by the Board pursuant to authority granted to the Association in the Association Documents. Failure by the Board, the Association, Declarant or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In any action instituted or maintained for enforcement of the Association Documents, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator.

**23.11.2 Scope of Association Rights.** The Association may exercise any right or privilege expressly granted to the Association by the Association Documents or applicable law, including the Act and the Nonprofit Act, and may exercise any other powers consistent with the foregoing and necessary and proper for the governance and operation of the Association.

## 23.12 DISPUTE RESOLUTION.

23.12.1 *Agreement to Resolve Certain Disputes Without Litigation.* As used in this Section 23.12, the term “**Claim**” shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Elements, the Units or any other part of the Project, including, without limitation, any claim or cause of action that the Common Elements or the Units are defective or that the party constructing the same, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; (b) any claim or cause of action against the party constructing any Improvements or any employee, agent, director, member or officer of such party arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty; or (c) the interpretation, application or enforcement of any of the Association Documents or the rights, obligations and duties of any Party under any of the Association Documents. Unless all Bound Parties (as defined below) otherwise agree, the term “Claim” shall exclude (i) any action between or among Owners, which does not include Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants, or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents, (ii) any proceeding or suit by the Association against any Bound Party to enforce the provisions of this Declaration regarding Assessments, and (iii) any suit or proceeding by the Association to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to act under and enforce the provisions of Article 13 of this Declaration. The Association, Declarant, all Unit Owners, Permittees and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Article (collectively, the “**Bound Parties**” and individually, “**Bound Party**”) agree that the dispute resolution procedures set forth in this Section 23.12 shall apply to all Claims.

23.12.2 *Notice of Claim.* Any Bound Party who contends or alleges to have a Claim (a “**Claimant**”) against any other Bound Party (a “**Respondent**”) shall notify each Respondent in writing of the Claim (the “**Claim Notice**”), stating plainly and concisely: (i) the nature of Claim, including, date, time, location, Persons involved, and Respondent’s role in the Claim; (ii) the factual and legal basis of the Claim; and (iii) what Claimant wants Respondent to do or not to do to resolve the Claim. If the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (as a minimum) include: (a) a description of the Claim, including the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; (b) a description of the attempts of any Bound Party to resolve the Claim or correct such Alleged Defects (as defined in Section 23.12.5 below) and the opportunities provided to any Bound Party to resolve the Claim or correct such Alleged Defects; (c) if the Claim pertains to an Alleged Defect, a certification from an engineer licensed in the State of Colorado that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) if the Claim pertains to an Alleged Defect, the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any); (f) a description of the fee arrangement between such attorney and the Association;

{00680700.DOCX:3}

(g) an estimate of the costs and fees, including court costs and other costs, the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Board of Directors proposes to have prosecute the Claim on the Association's behalf and the source of the funds which will be used to pay such fees and expenses; (h) an estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Board of Directors proposes to have prosecute the Claim on the Association's behalf; (i) the estimated time necessary to conclude the action; and (j) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members.

**23.12.3 Mediation.** The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the Claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("**Termination of Negotiations**"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service mutually agreed upon by Claimant and Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of Mediation Notice**"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse and the date that mediation was terminated.

**23.12.4 Binding Arbitration.** If a Claim is not resolved by mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 23.12.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The parties shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceedings. No party shall be required to participate in the arbitration proceeding if all persons and entities against whom the party would have necessary or permissive cross-claims, counterclaims, or third party claims are not or cannot be joined in the arbitration proceeding. If the Claimant submits the Claim to binding arbitration in accordance with this Section, the arbitration shall be conducted in accordance with the following rules:

(a) **Initiation of Arbitration.** The arbitration shall be initiated by either party delivering to the other a notice thereof. Arbitration of the Claim shall be under the auspices of JAMS in accordance with the JAMS Commercial or Engineering and Construction Arbitration Rules & Procedures (the "**JAMS Rules**"), or, if JAMS is not available, the American Arbitration Association ("**AAA**") in accordance with the AAA's Commercial or Construction Industry Arbitration Rules (the "**AAA Rules**").

(b) **Governing Procedures.** The arbitration shall be conducted in accordance with the JAMS Rules or the AAA Rules, as applicable.

(c) Appointment of Arbitrator. The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, JAMS or the AAA, as applicable, shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection is referred to as the “**Arbitrator**”.

(d) Qualifications of Arbitrator. The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator’s occupation or profession, knowledgeable as to the subject matter involved in the dispute and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) Disclosure. Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute of the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute of the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in subsection (c) above.

(f) Compensation. The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator’s usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator’s compensation and expenses shall be advanced equally by the parties.

(g) Preliminary Hearing. Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing between the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the JAMS Rules or AAA Rules, as applicable, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious and cost-effective conduct of the proceeding.

(h) Management of the Arbitration. The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) Confidentiality. All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties’ attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.



(j) Hearings. Hearings may be held at any place within the State of Colorado designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) Final Award. The Arbitrator shall promptly (but, in no event later than 60 days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award or determination in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

*23.12.5 Testing for Alleged Defects.* Neither an Owner nor the Association will undertake or authorize any testing, including investigative testing, destructive testing or invasive testing of any kind for an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit (an "***Alleged Defect***") without first determining, based upon the presence of some readily observable evidence or condition, that an Alleged Defect may exist. In making such a determination the Owner or the Association, as applicable, will rely on the opinions and/or the conclusions of an independent third party report prepared by a qualified expert (e.g., a structural engineer) licensed in Colorado and obtained and paid for directly by the Owner or the Association, on an arm's length basis on customary terms for the preparation of engineering reports, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Owner or the Association in any Claim related to an Alleged Defect. Even in the event such evidence or conditions exist, the Owner or the Association will not be obligated to authorize or undertake such testing. In the event an Owner or the Association undertakes or authorizes testing for Alleged Defects, such Owner or the Association, as applicable, as a precondition to providing the Claim Notice with respect thereto described in Section 23.12.2, must have provided at least ten (10) days prior written notice of the date on which the inspection will occur to Declarant, its contractors and design professionals responsible for the design and/or construction, which notice shall identify the independent qualified expert engaged to prepare the report described above, the specific improvements to be inspected, and the date and time the inspection will occur. Declarant, its contractors and design professionals responsible for the design and/or construction will also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all Alleged Defects found.

*23.12.6 Right to Enter, Inspect, Repair and/or Replace.* Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Elements or any Unit (the "***Alleged Defect***"), the Bound Party and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Elements and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and

{00680700.DOCX:3}

necessary under the circumstances. Nothing set forth in this Section 23.12.6 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by any Bound Party. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

23.12.7 *Use of Funds.* Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and/or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

23.12.8 *Approval of Action.* The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses, including, without limitation, attorneys' fees, in connection with any Claim without the written approval of Owners holding sixty-seven percent (67%) of the Voting Interests in the Association cast in person or by proxy at a meeting duly called for such purpose at which a quorum is present. The presence of Owners or of proxies, or if by ballot then receipt by the Association of written ballots, holding sixty-seven percent (67%) of the Voting Interests, shall constitute a quorum at any meeting at which the Owners vote on approval of any Claim the Association wishes to bring. Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement with respect to any vote approving the Association to bring a Claim: "With full knowledge and understanding that my annual Assessments may be increased by the costs and fees associated with the proposed Claim, I/we APPROVE the authority of the Association to bring such Claim." The Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. If the Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 23.12.2 of this Declaration.

23.12.9 *Statute of Limitations.* All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 23.12.4 of this Declaration. If the arbitration proceedings are not initiated within the time period provided by Colorado law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

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

23.12.11 *Waiver of Consequential and Punitive Damages; Waiver of Jury Trial; Declarant's Limitation of Liability for Claims related to Alleged Defects.*

(a) Notwithstanding anything to the contrary set forth in this Declaration, no Bound Party shall be liable for any consequential, incidental, punitive, or indirect damages (including, but not limited to, lost profits) arising from, relating to, or otherwise in connection with any Claim even if such Bound Party has been advised of the possibility of or could have foreseen such damages. This waiver applies regardless of the form of action, whether in contract, tort, or otherwise.

(b) In connection with any Claim against Declarant or any of Declarant's parent, subsidiary, or affiliated entities, or against any of their contractors, design professionals, shareholders, members, officers, directors, managers, employees and/or agents ("**Potentially Responsible Parties**") relating to an Alleged Defect, the Total Liability (as hereinafter defined) of each Potentially Responsible Party shall be limited to the amount of insurance proceeds available under any policy or policies of insurance carried by the applicable Potentially Responsible Party as of the date on which a judgment or arbitration award is entered against such Potentially Responsible Party. If multiple Potentially Responsible Parties are covered under the same insurance policy, then the aggregate Total Liability of such commonly insured Potentially Responsible Parties shall be limited to proceeds available under their shared policy. Declarant shall maintain in effect, from the date of this Declaration until the expiration of the Colorado "statute of repose" period described in C.R.S. 13-80-104, an insurance policy or policies providing products/completed operations coverage insuring against, subject to the terms and conditions of the policy, construction defects with respect to the Project in an amount not less than \$5,000,000. "Total Liability" shall mean the aggregate total of all damages and other sums (including but not limited to attorneys' fees, costs, and pre-judgment interest) for which a Potentially Responsible Party may be held liable on the basis of Claims arising from or relating to an Alleged Defect.

(c) *Conflicts.* In the event of any conflict between this Section 23.12 and any other provision of the Association Documents, this Section 23.12 shall control.

23.12.12 BY ACCEPTANCE OF A DEED OR BY ACQUIRING TITLE TO A UNIT, EACH PERSON, FOR ITSELF, ITS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND WAIVES THE RIGHT TO PURSUE ANY BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH UNIT OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A UNIT, EACH UNIT OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS THE UNIT OWNER MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

23.13 **NOTICES.** All notices, demands, or other communications shall be in writing. Each Owner shall register a designated representative with the Association, including mailing address and email address. If no such registration is made, notices shall be sent to such Owner at the address of the Unit and shall be deemed properly given to the Owner if delivered to the last address so registered

with the Association, or if none then to the Unit address as provided above. Notices shall be given to the Declarant and the Association at:

TRIUMPHTIMBER RIDGE, LLC  
Attn: Michael E. Foster  
PO Box 2444  
Edwards, CO 81632  
mikef@triumphdev.com

with a copy to:

Brigette M. Paige  
Packard and Dierking, LLC  
WaterStreet  
2595 Canyon Blvd., Suite 200  
Boulder, CO 80302  
brigitte@packarddierking.com

Notices shall be given to First Mortgagees who have registered with the Association pursuant to Section 18.5 above. Notices may be delivered, sent via email, or sent by certified U.S. mail, postage prepaid (provided that if a notice is sent by email, a copy shall be mailed by certified U.S. mail the next business day). All notices shall be effective upon receipt. The designated representative, address, or email may be changed by notifying the Association in the manner described above, and upon any such change by any Owner, such Owner may, at its election and after notice thereof has been given, record an instrument amending the representative, address and/or email address of such Owner for purposes of this Section.

**23.14 SEVERABILITY.** Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

**23.15 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.

**23.16 CONFLICTS BETWEEN DOCUMENTS.** In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

**23.17 DECLARANT'S OWNERSHIP OF UNSOLD UNITS.** Unless expressly prohibited by the Act, Declarant shall enjoy the same rights and assume the same duties with respect to all unsold Units still owned by Declarant as the initial and subsequent Owners (other than Declarant) have in connection with their Units.

**23.18 COUNTERPARTS.** Any amendment to this Declaration may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart.

{00680700.DOCX:3}

(signature page follows)

DRAFT

**IN WITNESS WHEREOF**, Declarant has executed the foregoing Condominium Declaration of Timber Ridge Village as of the day and year first set forth above.

**DECLARANT:**

TRIUMPHTIMBER RIDGE, LLC, a  
Delaware limited liability company

By: TRIUMPH DEVELOPMENT WEST,  
LLC, a Colorado limited liability  
company, its Manager

By: \_\_\_\_\_  
M. Michael O'Connor, Manager

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2024, by M. Michael O'Connor, as Manager of Triumph Development West, LLC, Manager of TRIUMPHTIMBER RIDGE, LLC, a Delaware limited liability company.

Witness my hand and official seal.

Notary Public  
My commission expires: \_\_\_\_\_

\_\_\_\_\_, (“Grantee”), deed of trust beneficiary pursuant to a Deed of Trust dated \_\_\_\_\_ and recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ of the records of the Clerk and Recorder of the County of Eagle, Colorado, upon the subject Property, hereby consents to the recording of the above-stated Condominium Declaration of Timber Ridge Village (the “**Declaration**”) and the Condominium Map for Timber Ridge Village (the “**Map**”), which Declaration and Map shall run with the land and be binding upon all owners thereof, and the rights of Grantee shall be subordinated thereto, so that the terms of the Declaration and the Map shall apply as though recorded prior to the said Deed of Trust, and the rights pursuant to said Deed of Trust are modified hereby.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing Consent to Condominium Documents of \_\_\_\_\_ Condominiums  
was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_, by \_\_\_\_\_ as  
\_\_\_\_\_, of \_\_\_\_\_, a \_\_\_\_\_.

Witness my hand and official seal.

Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT A**  
to  
Condominium Declaration of Timber Ridge Village  
Property

LOT 1, TIMBER RIDGE SUBDIVISION,  
A PART OF SECTION 12, TOWNSHIP 5 SOUTH, RANGE 81 WEST OF THE 6<sup>TH</sup> P.M.  
TOWN OF VAIL, EAGLE COUNTY, COLORADO



**EXHIBIT B**  
to  
Condominium Declaration of Timber Ridge Village  
Voting Interest and General Expense Sharing Ratio

DRAFT

## **EXHIBIT C**

to

Condominium Declaration of Timber Ridge Village

### Recorded Easements affecting the Property

1. RESUBDIVISION OF LION'S RIDGE SUBDIVISION BLOCK C RECORDED JUNE 8, 1973 UNDER RECEPTION NO. 125309, EXCEPT THOSE EASEMENTS VACATED BY THE PLAT OF TIMBER RIDGE SUBDIVISION RECORDED FEBRUARY 21, 2014 UNDER RECEPTION NO. 201402611.
2. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN EASEMENT AGREEMENT RECORDED JULY 19, 1972 IN BOOK 224 AT PAGE 824.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN UNDERGROUND RIGHT OF WAY EASEMENT TO HOLY CROSS ELECTRIC ASSOCIATION, INC. RECORDED SEPTEMBER 12, 1979 IN BOOK 290 AT PAGE 952.
4. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ENCROACHMENT EASEMENT AGREEMENT RECORDED JANUARY 30, 1980 IN BOOK 298 AT PAGE 22.
5. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN UNDERGROUND RIGHT OF WAY EASEMENT TO HOLY CROSS ELECTRIC ASSOCIATION, INC. RECORDED OCTOBER 15, 1980 IN BOOK 311 AT PAGE 210.
6. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN AGREEMENT FOR BUS SHELTER RECORDED MAY 15, 2002 AT RECEPTION NO. 795694.
7. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN MASTER DEED RESTRICTION RECORDED JULY 17, 2003 AT RECEPTION NO. 840811.
8. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TIMBER RIDGE AFFORDABLE HOUSING PROJECT - PROJECT AGREEMENT RECORDED SEPTEMBER 04, 2003 AT RECEPTION NO. 846636.
9. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF TIMBER RIDGE SUBDIVISION RECORDED FEBRUARY 21, 2014 UNDER RECEPTION NO. 201402611.
10. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TRENCH, CONDUIT, AND VAULT AGREEMENT RECORDED JUNE 06, 2014 UNDER RECEPTION NO. 201409352.

11. RIGHT OF WAY EASEMENT AS GRANTED TO HOLY CROSS ENERGY, A COLORADO CORPORATION IN INSTRUMENT RECORDED JUNE 06, 2014 UNDER RECEPTION NO. 201409353.
12. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED SEPTEMBER 11, 2014 UNDER RECEPTION NO. 201415584.
13. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT RECORDED OCTOBER 01, 2014 UNDER RECEPTION NO. 201416860.
14. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED AUGUST 24, 2015 UNDER RECEPTION NO. 201515847.
15. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE AMENDED FINAL PLAT OF TIMBER RIDGE SUBDIVISION, LOT 1 RECORDED APRIL 09, 2024 UNDER RECEPTION NO. 202403760.

**EXHIBIT D TO**  
to  
Condominium Declaration of Timber Ridge Village

Allocation of Storage Areas

<b>Storage Area Number</b>	<b>Allocated to Unit Number</b>
SA1	
SA2	
SA3	
SA4	
SA5	
SA6	
SA7	
SA8	
SA9	
SA10	

**EXHIBIT E TO**  
to  
Condominium Declaration of Timber Ridge Village

Allocation of Parking Spaces

<b>Parking Space Number</b>	<b>Allocated to Unit Number</b>
PS1	
PS2	
PS3	
PS4	
PS5	
PS6	
PS7	
PS8	
PS9	
PS10	
PS11	
PS12	
PS13	
PS14	
PS15	
PS16	
PS17	
PS18	
PS19	
PS20	
PS21	
PS22	
PS23	
PS24	
PS25	
PS26	
PS27	
PS28	
PS29	
PS30	
PS31	
PS32	
PS33	
PS34	
PS35	
PS36	
PS37	
PS38	
PS39	
PS40	
PS41	
PS42	
PS43	

<b>Parking Space Number</b>	<b>Allocated to Unit Number</b>
PS44	
PS45	
PS46	
PS47	
PS48	
PS49	
PS50	
PS51	

DRAFT