

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR THE TIMBERS**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for THE TIMBERS condominiums, (“Declaration”) is made as of this 5th day of May, 2016, by GOCB, LLC, a Colorado limited liability company (“Declarant”). This amended and restated Declaration and the amended Map recorded this same date amend and restate those corresponding instruments previously recorded on April 22, 2016, in Gunnison County, which are hereby superseded.

RECITALS

- A. Declarant is the owner of that certain real property located in the County of Gunnison, Colorado, more particularly described on the attached **Exhibit “A”** (the “Property”).
- B. Declarant desires to create a condominium common interest community, pursuant to the Colorado Common Interest Ownership Act as set forth in the Colorado Revised Statutes § 38-33.3-101 et seq. (the “Act”), on the Property, the name of which is THE TIMBERS.
- C. The development plan for the Project calls for up to forty-four (44) Units in a single phase, to be completed in 2016.
- D. The foundation and structure of the Project building were constructed in 1999 by parties unknown and unaffiliated with the Declarant, and converted to condominiums by the Declarant in 2016.

**ARTICLE I
DECLARATION & SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the current year’s taxes, due but not yet payable, and those easements, licenses, rights of way, restrictions, reservations, encumbrances and covenants known or of record as set forth on **Exhibit “C”** hereto, as well as the following covenants, obligations, restrictions, and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act, to create a condominium.

**ARTICLE II
DEFINITIONS**

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

- 2.1 “Agency” means any agency or corporation such as the U.S. Department of Housing and Urban Development (“HUD”), U.S. Veteran’s Administration (“VA”), Federal National Mortgage Association (“FNMA”) or Federal Home Loan Mortgage Corporation (“FHLMC”) that purchases or insures residential mortgages, or any other public, quasi-public or private entity

which performs (or may perform) functions similar to those currently performed by any of such entities.

2.2 “Allocated Interests” means the undivided interest in the Common Elements, Common Expenses and votes in the Association allocated to each unit. The formulas for the Allocated Interests for each Unit are as follows:

2.2.1 Shares of ownership of Common Elements appurtenant to a particular Unit shall be on the basis of the proportion of the square footage of each Unit calculated from construction drawings compared to the total square footage of all Units, collectively, as may be adjusted so as to equal one hundred percent (100%) as shown on the attached Exhibit “B”.

2.2.2 Shares of the Common Expenses appurtenant to a particular Unit shall be on the basis of the proportion of the square footage of each Unit compared to the total square footage of all Units, collectively, as may be adjusted so as to equal one hundred percent (100%) as shown on the attached Exhibit “B”. Notwithstanding such allocation, certain Common Expenses may be apportioned to particular Units as provided under any provision of this the Act, this Declaration or any Association Document.

2.2.3 Voting: One vote per Unit.

2.3 “Articles” means the Articles of Incorporation for THE TIMBERS OWNERS ASSOCIATION, INC., a Colorado Nonprofit Corporation, to be on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.4 “Annual Assessment” or “Assessments” mean the Annual, Special and Default Assessments levied pursuant to Article XI below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

2.5 “Association” means THE TIMBERS OWNERS ASSOCIATION, INC. a Colorado Nonprofit Corporation, and its successors and assigns. The Association shall file an annual report in compliance with the Colorado Secretary of State, and register with the Department of Regulatory Agencies under C.R.S. § 38-33.3-401.

2.6 “Association Documents” means this Declaration, the Articles, the Bylaws, the Map, any Design Guidelines (as defined in Article XVI), and any budget, procedures, rules, regulations, protocols or policies adopted under such documents by the Association including without limitation guidelines for architectural review, Alternate Dispute Resolution, Responsible Governance and education of the Board and/or Owners.

2.7 “Building” means the building constructed on the Property that contains the Units.

2.8 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

2.9 “Ceiling” means the interior surface of the ceiling of a Unit.

2.10 “Clerk and Recorder” means the office of the Clerk and Recorder of Gunnison County, Colorado.

2.11 “Common Elements” means all portions of the Project except the Units. The Common Elements are owned in common by the Owners in undivided interests according to the Allocated Interests set forth in Section 2.2 above, and consist of General Common Elements and Limited Common Elements.

2.11.1 “General Common Elements” means all tangible physical properties of the Project except the Limited Common Elements and the Units. General Common Elements may also alternatively be referenced in this Declaration and on the Map by the initials “GCE” or “CE”.

2.11.2 “Limited Common Elements” means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map, in a recorded certificate executed by the Declarant pursuant to Article XV, or by authorized action of the Association, for the exclusive use of an Owner of a Unit, or are limited to and reserved for the common use of more than one but fewer than all Owners. Limited Common Elements may also alternatively be referenced in this Declaration and on the Map by the initials “LCE”.

Without limiting the foregoing, the Limited Common Elements shall include any deck, balcony, patio, yard, attic, fireplace flue Storage Space and Parking Space appurtenant or adjacent to any Unit, and is intended for its exclusive use, as well as the utility, heating or air conditioning and domestic hot water equipment contained within or providing exclusive service to any such Unit, which Limited Common Elements shall be used in connection with the applicable Unit to the exclusion of the use thereof by the other Owners, except by invitation.

No reference thereto need be made in any instrument of conveyance, encumbrance or any other instrument in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

The Limited Common Element Storage Spaces and Parking Spaces are further described, provided for and allocated in Article III herein.

2.12 “Common Expenses” means: (i) all expenses expressly declared to be common expenses by this Declaration or other Association Document; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article X; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

2.13 “County” means Gunnison County, Colorado.

2.14 “Declarant” means GOGB, LLC a Colorado limited liability company and any of their successors or assigns who have received an assignment of the Declarant’s rights pursuant to the Act. Owners understand and agree that conversion of this project was undertaken by the Declarant and, despite the fact they may have met or dealt with individuals representing that entity as manager, member, owner or agent, Owners and Purchasers agree to hold harmless and release those individuals and look solely to the Declarant entity with respect to any actual or

alleged demand, liability or claim pertaining to all facets of the development of the Project and management of the Association while under Declarant control.

- 2.15 “Declaration” means this Declaration and the Map, and amendments and supplements thereto, as further provided in Article XVIII herein.
- 2.16 “Development Right” and “Special Declarant Rights” mean the right to add real estate to the Project; create, subdivide or convert Units, Common Elements or Limited Common Elements within the Project; or withdraw real estate from the Project, as further defined by Section 103 of the Act and Article XV herein.
- 2.17 “Eligible Mortgagee” *see* Section 17.5.
- 2.18 “Exterior Walls” means the walls bounding a Unit on all sides.
- 2.19 “Executive Board” or “Board of Directors” or “Board” mean the governing body of the Association.
- 2.20 “First Mortgage” means any 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.
- 2.21 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage.
- 2.22 “Manager” means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, to the extent the Executive Board may authorize from time to time.
- 2.23 “Map” means the condominium map of the Project prepared in accordance with the Act and recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or part of the Property subject to this Declaration, and any supplements and amendments thereto, as further provided in Article XVIII.
- 2.24 “Member” means every person or entity that holds membership in the Association by virtue of ownership of a Unit.
- 2.25 “Mortgage” means any mortgage, deed of trust or other document conveying any Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.
- 2.26 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of such person under such Mortgage.
- 2.27 “Owner” means the owner of record, whether one or more persons, of fee simple title to any Unit. “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest therein.

- 2.28 “Owner’s Agent” means members of the Owner’s family, or the Owner’s agent, employee, invitee, licensee or tenant.
- 2.29 “Parking Space” one of the Parking Spaces as shown on the Map and as further described and allocated by this Declaration. Each Unit shall be allocated the right to use and occupy one, unassigned Limited Common Element Parking Space under this Declaration. Parking Spaces shall generally be Limited Common Elements and the boundaries are shown on the Map, and on the physical space by painted lines. In the event of a discrepancy between the Map and the physical location of the painted lines, the Map shall control. The Parking Spaces are located within the “Parking Lot”, which lot itself shall be a General Common Element.
- 2.30 “Person(s)” means a natural person or any legal association of persons including, but not limited to, partnerships, limited partnerships, corporations, limited liability companies or associations recognized under Colorado Law.
- 2.31 “Project” means the condominium common interest community created by this Declaration and as shown as the Map consisting of the Property, the Units, and the Common Elements.
- 2.32 “Recreational Facilities” shall mean those portions of the Project which are General Common Elements intended for the use and enjoyment of every Owner, including the hot tub, barbecue area, storage lockers, and bike/dog wash area.
- 2.33 “Storage Space” one of the Storage Spaces as shown on the Map and as further described and allocated by this Declaration. Each Unit shall be allocated a Limited Common Element Storage Space under this Declaration. Storage Spaces shall generally be Limited Common Elements and the boundaries are shown on the Map. The Storage Spaces are located within the “Storage Room”, which lot itself shall be a General Common Element.
- 2.34 “Successor Declarant” means any person or entity to whom Declarant assigns any 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.
- 2.35 “Supplemental Declaration” means an instrument that amends this Declaration in accordance with the amendment provisions of Article XVIII herein or under the Act if not otherwise provided herein.
- 2.36 “Supplemental Map” means a supplemental map of the Project that depicts any change in the Project through a Supplemental Declaration, or which otherwise corrects or amends the Map in accordance with the Act or Article XVIII herein.
- 2.37 “Town” means the Town of Mt. Crested Butte, Colorado, acting through its duly authorized employee or body; and The Code of the Town of Mt. Crested Butte, Colorado may be referred to as the “Code”.

2.38 “Unit” means, with respect to enclosed units intended for dwelling, one individual unit as bounded by the unfinished interior surface of the Exterior Walls, as further defined herein. The lower boundary for each Unit is the unfinished interior surface of the floor, extending to the inside of the unfinished Exterior Walls of the Unit. The upper Unit boundary for each Unit is the unfinished interior surface of the Ceiling of the Unit. Each Unit includes the airspace contained within the unfinished interior of the Exterior Walls, windows, doors and fireplaces, if any, all as shown on the Map, as well as an undivided interest in the Common Elements. The Units are further described in Article III hereof.

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

ARTICLE III
NAME; UNIT DIVISION, COMMON ELEMENTS, CONVEYANCE, ALLOCATION,
DESCRIPTION & RESTRICTIONS

3.1 Name. The name of the Project is THE TIMBERS. The Project is condominium pursuant to the Act.

3.2 Association. The name of the Association THE TIMBERS OWNERS ASSOCIATION, INC., a Colorado Nonprofit Corporation. Declarant has caused the Association to be incorporated as a nonprofit corporation under the Laws of the State of Colorado.

3.3 Number of Units. Subject to Declarant’s reserved rights under Article XV, the Project shall consist of a maximum of forty-four (44) Units. Each Unit shall consist of the fee simple ownership interest in the Unit as defined in this Declaration and an undivided fee simple ownership interest in the Common Elements in accordance with **Exhibit “B”** hereto and as further defined in this Declaration.

3.4 Identification of Units. The identification number and/or street address of each Unit is shown on the Map.

3.5 Description of Units & Limited Common Elements; Inseparability; Transfer.

3.5.1 Description. The provisions of Section 202 of the Act, entitled “Unit Boundaries” are applicable to the Project. The Unit Boundaries are generally shown on the Map, and are generally enclosed and bounded by the unfinished interior of the Exterior Walls, as further defined herein, as follows:

(a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finished flooring and any other materials constituting any part of the finished interior surfaces of the bounding Exterior Walls, floors and ceilings are a part of the Unit, and all other portions of the bounding Exterior Walls, floors or ceilings are a part of the General Common Elements.

(b) If any chute, utility facility, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the designated boundaries of a Unit, or which otherwise serves or benefits more than one Unit, then any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements.

(c) Subject to the provisions of paragraph 3.5.1 (b) above, all spaces, interior partitions, non-bearing walls, other fixtures and improvements within the Exterior Walls of a Unit are a part of that Unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the defined boundaries thereto, are Limited Common Elements allocated exclusively to that Unit.

(e) With respect to any non-bearing interior walls, partitions, windows, posts or doors which separate two or more Limited Common Elements, but do not separate any Limited Common Element(s) from any General Common Element(s) or Unit(s), said partition, wall, window, door or post shall be a Limited Common Element allocated to the Owners of those Units which are allocated said adjoining Limited Common Elements.

(f) With respect to any other walls, partitions or posts that separate any Limited Common Element(s) from any General Common Element(s) or Unit(s), said wall, partition or post shall be a General Common Element.

(g) The lower boundary for each Unit is the interior surface of the unfinished floor of the lowest level of the Unit. The upper Unit boundary for each Unit is the interior surface of the Ceiling of the uppermost level of each Unit.

3.5.2 Inseparability. Each Unit as defined above and the appurtenant interest in the Common Elements shall comprise one Unit; shall be inseparable; and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

3.5.3 Transfer of Unit. Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it as follows:

Condominium Unit No. ____, THE TIMBERS condominiums, Gunnison County, State of Colorado, according to the Condominium Map thereof recorded on _____, at Reception No. _____, and the Declaration recorded on _____, at Reception No. _____, in the records of the Clerk and Recorder of Gunnison County, Colorado, as may be amended from time to time.

3.5.4 Transfer and Allocation of Limited Common Elements. All Parking and Storage Spaces may be Limited Common Elements or General Common Elements, as further defined in this

Declaration and depicted and defined on the Map, and, in the case of Limited Common Elements, allocated to the exclusive use and occupancy of the Owners of particular Units herein.

(a) Parking Spaces. The exact number of Parking Spaces shall be as set forth and depicted on the Map. Each Unit shall be allocated the right to use and occupy one, unassigned Parking Space under this Declaration. Spaces marked with a disabled sign shall be General Common Elements allocated to the exclusive use of parties with a government issued disabled parking permit.

(b) Storage Spaces. The exact number of Storage Spaces shall be as set forth and depicted on the Map. Each Unit shall be allocated the right to use and occupy one Storage Space under this Declaration as assigned and labeled on the Space by the Declarant.

(c) Use. To the extent one or more Parking or Storage Spaces may be located adjacent to doorways, trash receptacles or utility poles, or encroach at all into any public right-of-way, the Owner with the right to use same shall accept its use subject to the possible inconvenience and Association, County and Town requirement to move its vehicle on certain times to ensure the orderly removal of trash, safety and access to the Building and public rights-of-way. In addition, parking is subject to the requirement from time to time that vehicles be moved to allow for snow removal including plowing. The Declarant and Association shall be entitled to regulate the use of Parking Spaces including reasonably regulating the number of spaces, in excess of one, that those residing in a Unit may utilize at any time. Owners shall not grant any lease, easement, license or other rights for the use of any Parking or Storage Space to parties not residing in a Unit

(d) General Provisions. EACH UNIT IS HEREBY ALLOCATED THE RIGHT TO THE USE AND OCCUPANCY OF ONE UNASSIGNED PARKING SPACE AT ALL TIMES. However, during the period in which the Declarant still owns at least one Unit, the Declarant reserves the right to designate that a particular Parking Space shall be assigned and appurtenant exclusively to a particular Unit, so long as not depriving any other Unit of its right to one unassigned Parking Space. Where applicable, upon closing Declarant shall assign that Unit the right to the exclusive use and occupancy of that corresponding Parking Space, and that space shall thereafter be permanently appurtenant to that Unit unless reallocated as provided herein. If applicable, a list of those Parking Spaces assigned as may be set forth on an Amendment to this Declaration to be signed by the Declarant and recorded upon the transfer of the Declarant's last Unit stating to which Unit said spaces have been assigned. The failure of Declarant to record such an amendment or include the verbiage assigning a Parking or Storage Space to a good faith purchaser for consideration shall not defeat, alter or impair the rights of the Owner to whom said space is assigned.

The Loading Zone, labeled LZ on the Map, shall be a General Common Element designated for short-term loading and unloading only. The dumpster area, labeled D on the Map, shall be a General Common Element designated for placement and keeping of

trash, recycling and composting receptacles, as applicable and in compliance with local law and this Declaration.

3.5.5 Reallocation of Limited Common Elements. Pursuant to Section 208 of the Act: a Limited Common Element may be reallocated between or among units after compliance the following procedure to amend this Declaration. In order to reallocate assigned Limited Common Elements between or among units, the Unit Owners of those Units, as the applicants, must submit an application for approval of the proposed reallocation to the Executive Board, which application shall be executed by those Unit Owners and shall include: (a) The proposed form for an amendment to the Declaration as may be necessary to show the reallocation of Limited Common Elements between or among Units; (b) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Executive Board; and (c) Such other information as may be reasonably requested by the Executive Board. No reallocation shall be effective without the approval of the Executive Board. The reallocation shall be effectuated by an amendment signed by the Association and by those Unit Owners between or among whose Units the reallocation is made, which amendment shall be recorded as provided in section 38-33.3-217 (3) All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

3.5.6 Conversion of Limited Common Elements. The conversion of Common Elements and/or Units requires amending this Declaration as further set forth in Article XVIII herein below.

ARTICLE IV USE RESTRICTIONS; COVENANTS

- 4.1 Home Office. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied primarily as a residence. Nothing in this Declaration is intended to prevent the lawful use of any Unit as the home office for a business entity owned by or affiliated with a Unit Owner, or occupant. Any business activity conducted within a Unit shall be undertaken in such a manner to ensure the activity does not interfere with other Owners' quiet use and enjoyment of the Project premises. The Association may establish and enforce any reasonable rules and regulations relating to the conduct of business activities on the Project premises, including the Units.

- 4.2 Leasing. Subject to the provisions of Section 4.6.2 and Section 5.10 and the Town Code, an Owner shall have the right to lease their Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) no leases shall be made for less than a thirty day term; (ii) all leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration and the Bylaws; (iii) a Unit may be leased only for the uses provided herein above, and (iv) 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 there is a lease or the lease contains such a provision. The Association may also require the use of its own lease form.

- 4.3 Pets. Unit Owners, their guests and tenants in compliance with this Declaration may keep household pets. No household pet or animal shall be allowed in or about the Project, including Common Elements, at any time without being on a leash and under close supervision by an Owner or the person responsible for said animal including guests and tenants. Owners shall be responsible for strict compliance with all laws and any Rules and Regulations adopted from time to time by the Association related to pet ownership, including any regulation limiting the number, or aggregate weight, or type of pets allowed (but not prohibiting dogs or cats), and shall ensure their pet does not interfere with other Owners' quiet use and enjoyment of the Project premises. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive noises created by any pets whether or not they are the owner of said pet. Pet waste shall be picked up immediately by the Owner or person responsible for that pet. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by -and any costs incurred by the Association as a result of- such pet. Any such amounts shall be and constitute a Default Assessment enforceable by the Association as per this Declaration. Regardless of any provision of this Declaration or Rules and Regulations adopted from time: in no event shall the number of pets (other than fish) kept by any Owner or occupant in a Unit exceed two (2) total pets; and the Association shall have the right to require removal from the Project of any pet causing a violation of any covenant or adopted Rules and Regulations, in addition to any other rights and remedies available.
- 4.4 Structures. Except as hereinafter provided and except as reserved by Declarant hereunder or as approved by the Executive Board, no structure of a temporary character, including but not limited to a trailer, tent, shack, storage shed, enclosure or outbuilding, shall be placed or erected upon or within any Unit or within any patio, balcony or deck area or within the Common Elements including the Parking Spaces and Parking Lot; no residence shall be occupied in any manner at any time prior to being fully completed; nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions set forth herein. However, during the actual construction, alteration, repair or remodeling of a residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work, subject to the prior written approval of the Executive Board as to the storage situs and method. The work of constructing, altering or remodeling any residence shall be prosecuted diligently from the commencement thereof until completion. Additional restrictions are imposed in Section 9.1 and Article XVI herein.
- 4.5 Nuisances. Any use, act or omission which is the source of or unreasonably interferes with another Owners quiet use and enjoyment of its Unit or the Project shall be a nuisance. All valid federal, state and local laws having jurisdiction shall be observed and may be enforced by the Association as if same were contained in the Association Documents. However, IN NO EVENT SHALL THE ACTS OR OMISSIONS OF THE DECLARANT or approved builder which are reasonably necessary to complete the Project or exercise rights reserved hereunder be deemed or constitute a nuisance unless they qualify as outrageous conduct.
- 4.6 Occupancy Requirements; Mt. Crested Butte; Town Code.

4.6.1 Certain restrictions on the Owner's use of their Unit and operations of the Project have been imposed by the Town of Mt. Crested Butte, by authority of Town Code and as a part of the approval process of the Project as follows:

4.6.2 Restrictive Covenant; Employee Housing.

- (a) Pursuant to that Restrictive Covenant dated November 30, 1999, recorded as described in Exhibit C attached hereto, and as such was amended by Amendment to Restrictive Covenant recorded ("Restrictive Covenant"), certain Units within the Project are restricted to the exclusive use and occupancy by Qualified Individuals, Employees and/or Seasonal Employees as such terms are defined in the Restrictive Covenant. As further provided herein, the Units subject to the Restrictive Covenant are labeled "R.E.H.U" on the Map (the "Restricted Units"). So long as said Restrictive Covenant remains in effect, the Restricted Units shall be used and occupied pursuant to the terms of the Restrictive Covenant. The Restricted Units contain approximately 3,937.5 total square feet as shown on the Map.
- (b) To the extent the Restrictive Covenant is properly terminated, this restriction and shall be of no further effect upon the Project or any Units as reflected in an instrument recorded with the Clerk and Recorder.
- (c) Notwithstanding any provision in the Association Documents to the contrary, declaration, bylaws, or rules and regulations of the association to the contrary, the Project shall be subject to Section 106.5 of the Act, to the extent applicable, regarding the right to restrict, among other matters, occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority. Subject to the Town Code and the Restrictive Covenant, nothing in this section shall be construed to prohibit the future Owner of a Unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such Unit as long as any unit so released is replaced by another Unit in the same common interest community on which the restriction or specification applies and the Unit subject to the restriction or specification is reasonably equivalent to the Unit being released in the determination of the beneficiary of the restriction or specification.

4.6.3 Notwithstanding any provision to the contrary herein, in accordance with the Town Code, as may be amended from time to time: (a) the Association shall make payment of all water and sewer charges for all individual condominium Units within the Project, and any Common Element charges in accordance with the rules and regulations of the Crested Butte Water and Sanitation District; (b) if any condominium Unit is owned by more than one (1) person, or by a partnership, joint venture, corporation or other such entity, the Owners thereof shall designate to the Association, in writing, the name and address of the agent of the Owner to whom all legal or official assessments, liens, levies or other such notices may be properly and lawfully mailed, and that, upon failure to so designate an agent, the Association shall be deemed to be the agent for receipt of notices to such Owners.

4.7 Miscellaneous Use Restrictions; Rules and Regulations

4.7.1 (a) Except for rights reserved by the Declarant hereunder and address designations, no other sign or banner bearing commercial or any other connotation, may be placed or located within any common element, Unit or window in the premises, or otherwise visible from any public or private street, alley, sidewalk, building or property. Notwithstanding the foregoing, an Owner shall be entitled to place one typical "For Sale" or "For Rent" sign in an area of the Common Elements designated for same by the Executive Board or Declarant, and in no event in the window of their Unit. The Executive Board has the further right to limit the size and other characteristics of any approved sign. Nevertheless, the regulation of the placement or display of American Flags, Service Flags and Political Signs shall be subject to and governed by the Act and C.R.S. 38-33.3-106.5 and the Federal Flag Code, as may be amended from time to time; and the Board shall be free to adopt any rule or regulation regarding the placement so long as consistent with that section.

(b) Moreover, no Owner or lessee shall use as window coverings bed sheets, tapestries, blankets, or any other material except for blinds, curtains and drapes made to be window coverings. Any window covering shall present a neutral background from the street view.

4.7.2 Absent Executive Board approval, no clotheslines, drying yards, service yards, woodpiles or storage areas shall be so located on any Unit or the Common Elements, as to be visible from a street, from any other Unit, or from the Common Elements;

4.7.3 Absent Executive Board approval, all types of refrigerating, cooling or heating apparatus shall be concealed within the Unit or Limited Common Elements and in no event may such an apparatus be placed upon the General Common Elements;

4.7.4 Absent Executive Board approval, no wind generators of any kind shall be constructed, installed, erected or maintained on the Project;

4.7.5 No trash, recyclables, debris, or refuse shall be deposited upon the Common Elements of The Timbers except only within trash containers, with lids firmly attached, in the designated areas. No food related products shall be placed or left on the Common Elements for an extended time or in any manner which might attract insects, rodents or animals and the Association may further regulate the manner in which trash is stored until picked up and hauled away.

4.7.6 Except to the extent this provision contravenes applicable state or federal Law (in which case this provisions shall be amended to be consistent therewith), no satellite dishes or exterior aerials or antennas of any kind may be placed upon the exterior of the Building or upon any part of a Unit or Common Element, as to be visible from a street, from any other Unit, or from the Common Elements without the prior written approval of the Executive Board, which may impose conditions, including but not limited to size, or height limitations and screening requirements, as it deems appropriate, regarding any approval.

4.7.7 Absent Executive Board approval, any outdoor umbrella and furniture which is visible from a street, from any other Unit, or from the Common Elements, is to be of neutral color,

without commercial connotation, and without writing. In addition, no bicycles, sports equipment, or other personal property may be locked to or stored upon any balcony; nor may Owners enclose their balcony or otherwise alter the aesthetic appearance of same including the alteration, covering or addition of balcony finish materials, surface, railings, partitions, lighting, or similar features. Propane barbecue grills (but not charcoal burning) may be placed and used outside on balconies appurtenant to Units, so long as not violating any requirement of the Association's insurance coverage in place under Article X below.

4.7.8 No Owner or other party may misuse any Recreational Facility or balcony, nor may they stray from the designated boundaries contained within the railings of balconies or decks or violate Town load requirements.

4.7.9 To the extent necessary to reduce sound transmission among Units, if any, the Executive Board may require Owners to place and keep area rugs within certain areas of their Unit.

4.7.10 No abandoned or inoperable passenger cars or other vehicles of any kind shall be stored or parked on the Project. An "abandoned or inoperable vehicle" shall be defined as any passenger car, truck, motorcycle, , which, for a period of two (2) days or longer, does not have an operable propulsion system installed therein, has flat tires or has any other condition preventing the regular and normal operation and movement of the vehicle. In addition, no boat, trailer, snowmobile, camper, house trailer, self-contained motorized recreational vehicle or other similar vehicle may be parked or stored upon the Property or within any Parking Space for any period of time. The Association shall be authorized to have non-complying vehicles towed away and stored at the cost of the owner thereof.

4.7.11 Notwithstanding any provision in the Association Documents to the contrary an association shall not effectively prohibit (a) renewable energy generation devices, as defined in C.R.S. § 38-30-168; (b) a Unit Owner from using, or installing at the unit owner's expense for the unit owner's own use, a level 1 or level 2 electric vehicle charging system on or in a Unit or about the Project subject to and in accordance with the requirements and exceptions of C.R.S. 38-33.3-106.8 and any County or Town requirements, including the required placement and insurance of same; nor (c) the installation or use of an energy efficiency measure subject to and in accordance with the requirements and exceptions of C.R.S. 38-33.3-106.7.

4.7.12 The Executive Board is further authorized to adopt formal Rules and Regulations and policies, binding upon all Owners, other than with respect to those rights reserved to the Declarant herein, setting forth restrictions on all matters its best discretion, including but not limited to those matters anticipated above and: (1) additional restrictions on the parking and storage of vehicles (including bicycles), and the types of vehicles (other than standard passenger cars and SUV's and those qualifying emergency service vehicles utilized by a Unit Owner or occupant as specified in the Act and C.R.S. 38-33.3-106.5), permitted on the Common Elements and when they are so permitted, including who may use said spaces; (2) storage of specific materials or property within the Project; (3) the performance of specific activities or work within Common Elements; (4) the placement or location of any object in the Common Elements which is to be visible from a street, from any other Unit, or from the Common Elements; (5) smoking in the General Common Elements; and (6) permissible levels of noise or odors emanating from

anywhere in the Project at any time into the Common Elements or another Unit. New Rules and Regulations adopted by the Board as provided under the Association Documents shall have the same effect as if they are a part of this Declaration so long as not inconsistent herewith. In the event of conflict between any other Association Document and the Rules and Regulations, the other Association Document shall prevail but only to the extent the rule attempts to invalidate the express language of that Association Document.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

- 5.1 The Association. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit
- 5.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his 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.
- 5.3 Membership and Voting. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents. Notwithstanding the number of Owners of record for any particular Unit, each Unit is entitled to one vote. Votes cannot be fractionally divided.
- 5.4 Declarant Control. Declarant shall be entitled to appoint and remove the Members of the Association's Executive Board and officers of the Association during the term of Declarant control. "Declarant Control" begins with the appointment of the initial Executive Board. The period of Declarant Control of the Association shall terminate upon the first to occur of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the total number of Units in the Project to Owners other than Declarant; (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's Control, but in that event, Declarant may require, for the duration of the period of Declarant's Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Notwithstanding the period of Declarant Control, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the total number of Units in the Project to Owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board may be elected by Owners other than Declarant; and not later than sixty (60) days after conveyance of fifty percent (50%) of the total number of Units in the Project to Owners other than Declarant, not less than thirty-three and one-third percent (33.33%) of the Members of the Executive Board may be elected by Owners other than

the Declarant. Not later than the termination of the period of the Declarant's Control as provided above, the Owners, (including the Declarant) shall elect an Executive Board of at least three (3) members, as further specified in the Bylaws, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than Declarant and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election. Within sixty (60) days after the Owners other than the Declarant elect a majority of the Executive Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by the Declarant, including without limitation those items specified in Section 303(9) of the Act.

5.5 Books and Records. The Association shall maintain such books and records as may be required under Section 317 to the Act, sufficiently detailed to enable compliance with Section 11.10 to this Declaration. As further provided hereon, the Association shall make available to Owners and to Mortgagees for inspection, upon request, during normal business hours or other reasonable circumstances, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials not to exceed its actual cost. In addition:

5.5.1 Annual Disclosures. Within ninety (90) days after assuming control from the Declarant pursuant to the Act, the Association shall make the following information available to Unit Owners upon reasonable notice in accordance with 5.5.3 below. In addition, if the Association's designated agent or management company changes, the Association shall make updated information available within ninety (90) days after the change: the name of the Association; the name of the Association's designated agent or management company, if any, together with the agent's or management company's license number if the agent or management company is subject to licensure under Colorado law; a valid physical address and telephone number for both the Association and the designated agent or management company, if any; the name of the common interest community; the initial date of recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration.

5.5.2 Post-Transfer, Fiscal Year-End Disclosures. Within ninety (90) days after assuming control from the Declarant pursuant to the Act and Section 5.4 above, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Unit Owners upon reasonable advance notice:

- (a) the date on which its fiscal year commences;
- (b) its operating budget for the current fiscal year;
- (c) a list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (d) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (e) the results of its most recent available financial audit or review;

(f) a list of all Association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies, if any. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.

(g) all the Association's Bylaws, Articles, and Rules and Regulations, if any;

(h) the minutes of the Executive Board and member meetings for the fiscal year immediately preceding the current annual disclosure;

(i) the Association's responsible governance policies ("Policies") adopted under section 38-33.3-209.5 of the Act and Section 5.11 hereto; and

(j) any other items required under the Act or C.R.S. 38-33.3-209.4 as may be amended from time to time.

5.5.3 Form of Disclosure. The Disclosure required in Sections 5.5.1 and 5.5.2 above shall be accomplished by one of the following means: posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery, the cost of such distribution shall be accounted for as a common expense liability.

5.5.4 Review and/or Audit. At the discretion of the Board or upon request of at least one-third of the Units represented by the Association the books and records of the Association shall be subject to a REVIEW using statements on standards for accounting and review services, by an independent, qualified person selected by the Board. Such person need not be a certified public accountant except in the case of an audit, but the person selected to conduct a review shall nevertheless have at least a basic understanding of the principals of accounting as a result of prior business experience, education above the high school level or a bona fide home study. An AUDIT using generally accepted accounting standards, as compared to a review, of the books, records and financial statements of the Association shall only be required upon the discretion of the Board or under those circumstances enumerated under the Act or C.R.S. 38-33.3-303, as may be amended from time to time. The audit or review shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principals or the cash or tax basis of accounting.

5.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, duties or functions of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board. Any managing agent, employee, independent contractor, or other person acting on behalf of the Association shall be subject to the Act and the Association Documents to the same extent as the Association itself would be; and shall be licensed by the State, and insured, to the extent required by law. The Association's contract with a managing agent shall be terminable for cause without penalty to the Association. Any such contract shall be subject to renegotiation. The Manager shall be licensed, if and when required, in accordance with C.R.S. § 38-33.3-402.

5.7 Rights of Action; Alternate Dispute Resolution; Attorney Fees.

5.7.1 Right of Action; Owners and Association. Except as limited hereinbelow, the Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with the decisions of the Executive Board made pursuant to the authority granted to the Association in the Association Documents. The Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to the authority granted to the Association in the Association Documents. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

5.7.2 Binding Arbitration. As set forth below, actions seeking \$15,000.00 or less, or otherwise within the then current Jurisdictional Limit of the County Courts of the State of Colorado, from time to time (which may include enforcing the covenants of the Association Documents if the amount in controversy does not exceed the Jurisdictional Limit), or foreclosure of an assessment lien, shall not be subject to this Section and may be commenced and heard in such courts if duly approved by the Board, subject to any valid Policies of the Association then in effect.

(a) Binding Arbitration Applicable. Notwithstanding any provision in the Declaration, Association Documents or the Act to the contrary, any action, dispute, claim or controversy between or among the Declarant, the Association, Owners or third-persons, claiming, involving or seeking an amount greater than \$15,000.00 (or the then current "Jurisdictional Limit" of the County Courts of the State of Colorado) related to, without limitation: any breach of contract or representation; damages; construction defect (including without limitation Section 303.5 of the Act); to enforce the covenants of the Association Documents; or to collect Assessments and any related fines, late charges, penalties, interest or costs and expenses, whether sounding in contract, tort or otherwise, and whether or not concerning a Unit or the Common Elements ("Dispute"), and not otherwise resolved via mediation, SHALL BE RESOLVED BY BINDING ARBITRATION AS SET FORTH IN THIS SECTION. This requirement shall not apply to any foreclosure matter that by statute must be heard in a Court of law. Such Dispute shall be resolved by arbitration in accordance with Title 9 of the U.S. Code, the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq., and the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then in effect, as applicable. The arbitrator's award shall be entered as a judgment in the district court for County of Gunnison. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceedings under this section. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to allow discovery and decide prehearing motions that are substantially similar to prehearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Except as otherwise provided, the arbitrator shall be selected in accordance with the Construction Industry Arbitration Rules of AAA. Any arbitrator selected under this section shall be knowledgeable in the area of the subject matter of the Dispute. Qualified arbitrators shall be selected through panels maintained by AAA, by any court in which the site is located, or any

private organization providing such services. Any proposed amendment to this section shall be in accordance with the terms of Section 18.2.17 below.

(b) Procedure. If any claim regarding defects in construction or negligence for failure to identify, discover or cure construction defects is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified, and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided in advance of any request for mediation or arbitration.

(c) Consent for Litigation or Arbitration. In order to limit arbitration or litigation, and the accompanying expense, distraction and commitment of financial and other resources, the Association shall not initiate or participate in any arbitration or litigation in its own name in excess of the Jurisdictional Limit without complying with the provisions of this Section 5.7.2. Prior to the initiation or participation by the Association in any such arbitration or litigation, the Board must first give due consideration to the expense, distraction, and commitment of financial and other resources that will be incurred or suffered by the Association. If the Board reasonably determines that arbitration or litigation is appropriate after such due consideration, the Board shall (i) call a special meeting (pursuant to the terms of the Bylaws of the Association); (ii) report to the Members at the Special Meeting all of the Board's concerns, deliberations and conclusions required in this Section 5.7.2; (iii) establish a budget for such arbitration or litigation and describe that budget in reasonable detail to the Members (which budget shall be prepared by the attorneys who will be engaged by the Association for such purpose, and shall have been mailed or delivered to all Owners and posted at the principal office of the Association at least 15 days prior to such meeting); (iv) recommend to the Members that the Association initiate or participate (as the case may be) in arbitration or litigation; (v) recommend adoption of the budget for such action; and (vi) consider the impact or any potential stigma of such claims upon the Project whether or not successful. Notwithstanding any other provision of this Declaration or the Bylaws, and regardless of the number of Members actually attending such Special Meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of Members holding at least sixty-seven percent (67%) of the total voting power of the Association to that course of action, and the same percentage of Members of the Association must concurrently approve the imposition of a Special Assessment to fund the costs of such action or proceeding in accordance with the approved budget. All of the costs and expenses of any action or proceeding requiring the approval of the Owners in accordance with the preceding sentence shall be funded by means of a Special Assessment, and in no event may the Association use reserve funds or incur any indebtedness in order to pay any costs and expenses incurred for such purpose. The Association shall be authorized to expend funds for such proceeding in excess of the amount contemplated by the approved budget only after an amended budget has been approved in accordance with the procedures specified in the foregoing sentence. Moreover, in no event shall the Association retain an attorney on a contingency basis unless (i) a copy of the contingency fee agreement has been mailed or delivered to all Owners and posted at the principal office of the Association at least 15 days prior to the effective date of such fee agreement; (ii) the Board calls a Special Meeting of the Owners (which may be the same meeting as otherwise required in this Section) for the approval of such fee agreement; and (iii) the contingency fee arrangement and contingency fee agreement be approved in writing by

Members holding at least sixty-seven percent (67%) of the total voting power of the Association, regardless of the number of Owners actually attending such Special Meeting.

(d) Mediation. If any controversy arising in any manner out of the Association Documents, Project, or the operations or the actions of the Association or Board, is properly submitted to mediation by either party to the controversy prior to the commencement of any Arbitration or legal proceeding, when allowed, the mediation agreement, if one is reached, may be presented to the Court as a stipulation. If either party subsequently violates the stipulation, the other party may apply immediately to the Court for relief.

5.7.3 Attorney Fees. The prevailing party in any arbitration or civil action shall be entitled to reimbursement from the non-prevailing party or parties for all reasonable collection costs and expenses, including attorney fees, in connection with such alternate dispute resolution or judicial relief. Even if the matter is resolved without legal proceeding or alternate dispute resolution, the Association, any Unit Owner, or any class of Unit Owners adversely affected by the failure to comply shall be entitled to and may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding or means of alternate dispute resolution. However, in connection with any claim in which a Unit Owner is alleged to have violated a provision of the Act or any Association Document and in which the court finds that the Unit Owner prevailed because the Unit Owner did not commit the alleged violation: (I) the court shall award the unit owner reasonable attorney fees and costs incurred in asserting or defending the claim; and (II) the court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Unit Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or defending the claim. In any event, a Unit Owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

- 5.8 Implied Rights & Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.
- 5.9 Notice. Any notice to any Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally; by courier; by private delivery service or; on the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit.
- 5.10 Owner Use and Occupancy Regulation. Subject to the Restrictive Covenant addressed in 4.6.2 above, the Association shall have and may exercise the right to control Owner's use and occupancy of their respective Units in order to assure Owners of the eligibility of the Project for any Agency. In this regard, the Association may adopt rules and regulations with respect to rental of Units to non-Owners. Except as applies to Declarant, any Owner wishing to lease a Unit shall be subject to the percentage occupancy requirement of the applicable Agency and must first apply for authorization from the Association for any non-Owner residential use that may impact any Project eligibility or for any other reason adopted by resolution of the Association. Allowance of an Owner to rent a Unit shall be on a first-come, first-served basis

and the Association shall have the authority to permit or deny the use or leasing of any Unit within the Project, subject to then current Federal mortgage eligibility requirements, if applicable.

5.11 Responsible Governance Policies; Board & Owner Education. To the extent any of the following governance or education policies are not adequately addressed herein or in the Bylaws or Articles, the Association shall be entitled to adopt these provisions in an existing Association Document or in a separate instrument which shall thereafter become an Association Document. In the event of conflict between any other Association Document and a Responsible Governance Policy, the other Association Document shall prevail but only to the extent the Policy attempts to invalidate the express language of that Association Document. Per the Act, to promote responsible governance, the Association shall:

(a) maintain accurate and complete accounting records; and

(b) adopt “Responsible Governance Policies”, being procedures, and rules and regulations available to Owners upon request concerning: (I) collection of unpaid assessments; (II) handling of conflicts of interest involving Board members; (III) conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles; (IV) enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines; (V) inspection and copying of Association records by unit owners; (VI) investment of reserve funds; and (VII) procedures for the adoption and amendment of policies, procedures, and rules; (VIII) written procedures for addressing disputes between the Association and Unit Owners; and (IX) when the Association has a reserve study prepared for the portions of the community maintained, repaired, replaced, and improved by the Association; whether there is a funding plan for any work recommended by the reserve study and, if so, the projected sources of funding for the work; and whether the reserve study is based on a physical analysis and financial analysis. For the purposes of this subsection, an internally conducted reserve study shall be sufficient.

(c) Violation of Laws and Ordinances; Nuisance. In no event shall the Policies of the Association regarding fines, hearings, mediation and appeals delay or preclude the right of the Association or any aggrieved Unit Owner from reporting a violation of State or local laws or ordinances to the property authority for immediate enforcement. This subsection (c) applies, without limitation, to the restrictions herein regarding nuisance and responsibility for the acts of their pets and removal of pet waste. Moreover, any Policy or related procedure granting time to request a hearing, mediation or appeal, or the pendency of same, shall not preclude citation for a subsequent offense no matter when occurring; and subsequent violation of the same covenant or rule shall not delay the pendency of any hearing, mediation or appeal. Without limitation, Unit Owners shall be held responsible for violations of the covenants, rules or regulations by their tenants, including responsibility for payment of fines and assessments related thereto.

(d) Board Education. The Board may authorize, and account for as a common expense, reimbursement of board Members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of unit owners’ associations, the course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of the Act or C.R.S 38-33.3-209.7.

(e) Owner Education. The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and its Executive Board under Colorado law. The criteria for compliance with this section shall be determined by the Executive Board, although the Declarant may satisfy this requirement by supplying information at the meeting at which it transfers control of the Association.

ARTICLE VI POWERS OF THE ASSOCIATION EXECUTIVE BOARD

Except as further limited in various other provisions of this Declaration, Bylaws and Articles, the Executive Board may act in all instances on behalf of the Association to:

- 6.1 Adopt and amend rules and regulations regarding the use and enjoyment of the Common Elements and reasonable restrictions on the use of the Units;
- 6.2 Adopt and amend budgets, for revenues, expenditures and assessments, as further anticipated in Section 11.2 below;
- 6.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 6.4 Subject to Article V above, institute, defend or intervene in litigation or administrative proceedings in its own name or on behalf of itself or two or more Owners on matters affecting the Project;
- 6.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice unless a shorter notice period is mutually agreed to by the parties to the contract;
- 6.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- 6.7 Cause additional improvements to be made as part of the Common Elements;
- 6.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if: (a) Members entitled to cast at least sixty-seven percent (67%) of the votes agree to that action; and (b) the provisions of Article XVII are followed with respect to approval of the Eligible Mortgagees; and (c) all Owners to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;
- 6.9 Grant easements, leases, licenses and concessions through or over the Common Elements, subject to approval by Owners;

- 6.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements, subject to approval by Owners;
- 6.11 Impose charges for late payment of Assessments, recover reasonable attorneys fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated; and, after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- 6.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;
- 6.13 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- 6.14 Assign its right to future income, including the right to receive Assessments;
- 6.15 Exercise any other powers conferred by the Declaration or Bylaws;
- 6.16 Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association, subject to the terms of the Articles;
- 6.17 any other powers necessary and proper for the governance and operation of the Association not inconsistent herewith.
- 6.18 Adopt guidelines, rules and regulations, protocols and policies required hereunder or under the Act, pertaining to Alternate Dispute Resolution, Responsible Governance Policies and education of the Board and/or Owners. To that end, the Board may delegate the right to evaluate and assist in drafting such documents to legal counsel or any committee of Owners formed for that purpose but, in any event, all such documents shall be subject to ultimate approval of the Board. Although consent of the Unit Owners is not specifically required, **THE BOARD SHALL CAUSE COPIES OF ANY AMENDMENTS TO BE DELIVERED TO ALL OWNERS AND, IF A MAJORITY OF THE ASSOCIATION DO NOT REASONABLY OBJECT IN WRITING TO THE BOARD WITHIN THIRTY (30) DAYS, THEY SHALL BE DEEMED ACCEPTED BY THE OWNERS.** If a majority of the Owners object to less than the entire amendment or document, in that instance, the remaining provisions shall be severable and approved independent of the objected terms. New Association Documents adopted by the Board shall have the same effect as if they are a part of this Declaration. In the event of conflict between any other bylaws or declaration and that association document, the Bylaws or Declaration shall prevail but only to the extent the instrument attempts to invalidate the express language of the Bylaws or Declaration.

**ARTICLE VII
MECHANIC'S LIENS**

- 7.1 **No Liability.** If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any

circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owners shall be solely responsible to contractors, laborers, material-men and other persons furnishing labor or materials to his Unit.

- 7.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid and enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall, at his own cost and expense, cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorney's fees resulting therefrom.
- 7.3 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 may be affected against a Unit(s).

ARTICLE VIII EASEMENTS

- 8.1 Recorded Easements. The Property shall be subject to all easements as shown on any Map or plat, those of record, those provided in the Act (including easements for encroachments as set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this article. *See Exhibit "C"*
- 8.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association and/or for Owners, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, including unconveyed Parking Spaces and the elevator, together with the right to store materials on the Common Elements, including unconveyed Storage and Parking Spaces, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any development and sale of the Units or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.
- 8.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements, the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently

available to the Units and the Common Elements which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes 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 Association, as to locations, which shall not be unreasonably withheld.

- 8.4 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 easements, permits or licenses over the Common Elements for the best interest of all Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit and all other areas of the Project to which they have an express or implied right to access, which right shall be appurtenant to the Owner's Unit and which right shall be subject to limited and reasonable restriction on the use of the Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.
- 8.5 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the scope of the proper performance of their duties.
- 8.6 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

ARTICLE IX MAINTENANCE

- 9.1 Maintenance by Owners. As further defined herein and provided for in Article III herein, each Owner shall maintain and keep in repair his Unit, including the fixtures therein to the extent current repair shall be necessary in order to avoid damaging other Owners. EACH OWNER SHALL BE RESPONSIBLE FOR PERIODIC SAFETY INSPECTIONS AND MAINTAINING ANY LIMITED COMMON ELEMENT ALLOCATED TO HIS UNIT, WHICH MAINTENANCE SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND REGULATIONS THAT THE ASSOCIATION MAY ADOPT FROM TIME TO TIME. 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. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall maintain Limited Common Elements allocated to his Unit free from clutter and debris. Each Owner's shall be responsible for the maintenance of the interior non-supporting walls of his Unit and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile, finished flooring and carpeting to the Exterior Walls, ceilings and floors within the Unit, including Unit doors, windows and screens. The Association reserves the right to assign further maintenance responsibility to the Unit Owner of certain areas

of each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform, non-discriminatory manner.

- 9.2 Owner's Failure to Maintain or Repair. In the event that a Unit (including the allocated Limited Common Elements, and other property assigned to the Owner for maintenance pursuant to Section 9.1) is not properly maintained and repaired, and if the maintenance responsibility for the un-maintained portion of the property lies with the Owner of the Unit, or in the event that the Unit is damaged 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 property 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 Executive Board (after a determination by the Executive Board that the condition of such Unit [or other property] negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit (or other property) to perform such work as is reasonably required to restore the Unit (or other property) to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit upon demand. All un-reimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for unpaid Assessments levied in accordance with Article XI of this Declaration.
- 9.3 Maintenance by Association. The Association shall be responsible for the maintenance, periodic safety inspection and repair of the Common Elements whether located inside or outside of the Units (except as set forth in Section 9.1 above and unless necessitated by damage caused by negligence, misuse or tortious act of an Owner or Owner's Agent as set forth in Section 9.4 below), which shall be the Common Expense of all Owners. However, that except as expressly provided in this Declaration, the cost of maintenance and repair of Limited Common Elements undertaken by the Association shall be an expense of the Owner(s) allocated the Limited Common Elements so maintained and repaired. For example, all Owners of those Units allocated Limited Common Element Parking Spaces may be assessed by the Association for any maintenance undertaken by the Association to the Parking Space(s) or Lot, all as further defined herein; each such Owner being assessed in proportion to the number of Owners so allocated that respective Limited Common Element. The Association's maintenance of the Common Elements shall include, but not be limited to, upkeep, repair and replacement, subject to any insurance or other requirements then in effect, of all landscaping and walls which Owners are not required to maintain as set forth in Section 9.1, Recreational Facilities, elevator, gates, signage, Building fire system if any, Building security system if any, irrigation systems, sidewalks, driveways, roofs, exterior stairways and improvements, if any (which shall include without limitation snow removal services including plowing unless performed by another private or public organization formed for such purposes), located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. If the Declarant elects to conduct any maintenance or repair work on behalf of the Association, the Declarant shall bill the Association for the costs of the work conducted, providing documentation of the charges incurred. The

Association shall reimburse the Declarant for the maintenance or repair within fifteen (15) days of the Association's receipt of the Declarant's invoice.

- 9.4 Association Maintenance as Common Expense. Except as otherwise provided herein, the cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner according to the Allocated Interests therefor set forth in Section 2.2 above. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense of all of the Owners. However, if any damage to a Common Element or other Unit is caused by the intentional, negligent or tortious acts of an Owner or an Owner's Agent, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner or Owner's Agent's negligence caused such damage, which must be timely paid.
- 9.5 Easement for Maintenance. Each Owner and the Association shall have the irrevocable right, to be exercised only by the Manager, the Executive Board or officers or employees of the Association unless otherwise delegated in writing by the Association, to have access to each Unit from time to time during reasonable hours on reasonable notice as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article X are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.
- 9.6 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or an Owner's Agent, the then Owner(s) of the Unit(s) to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. In the event of damage or destruction of a Limited Common Element caused by the negligence or tortious acts of an Owner or an Owner(s) Agent, said Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence.
- 9.7 Association Power. Except to the extent of Declarant's reserved rights, the Association shall have the right and power to prohibit storage or other activities deemed, in the sole discretion of the Association, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements. **NO OWNER SHALL MAKE ANY ADDITION OR OTHER ALTERATION TO ANY PORTION OF THE COMMON ELEMENTS, NO MATTER HOW MINOR, WITHOUT THE EXPRESS WRITTEN CONSENT OF THE EXECUTIVE BOARD.**

ARTICLE X INSURANCE

- 10.1 General Insurance Provisions. Not later than the time of the first conveyance of a Unit to a purchaser other than the Declarant, the Association shall acquire and pay for out of the

Assessments levied under Article XI below, the following insurance policies carried with reputable insurance companies authorized to do business and licensed to provide insurance in the State of Colorado. A Unit Owner may file a claim against the policy of the Association to the same extent and with the same effect as if the Unit Owner were a named insured if the following conditions are met: (1) the Unit Owner has contacted the Board or manager in writing, and in accordance with any disclosed written policies or procedures of the Association regarding Owner-initiated insurance claims, supplying the time and circumstances of the event, the identification of the damaged property and the names and contact information of witnesses or any injured persons and other supporting documentation requested by the Board; and (2) the Unit Owner has given the Association at least fifteen days to respond in writing and, if so requested, has given the Association's agent a reasonable opportunity to inspect the damage; and (3) the subject matter of the claim falls within the Association's insurance responsibilities. However, before this process can be commenced the Owner must first notify its own personal insurance carrier of the damage. If the Board determines in its sole discretion that the claim is within the Association's insurance obligations, the Board may submit a claim to the Association's insurance carrier on behalf of the Owner as provided in that policy. In that event, or if the right to file the claim is denied by the Board, an Owner may not submit a claim to the Association's insurance carrier.

10.1.1 Property Insurance Coverage. Property insurance, with extended coverage, including fire, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the Common Elements, and including all fixtures, interior and Exterior Walls and floors, partitions, and finished surfaces of interior and Exterior Walls, floors, ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which are to be financed by a Mortgage to be purchased by an Agency, including FNMA and FHLMC, but excluding any betterments and improvements made by Owners, land, building excavations and foundations and items normally excluded from coverage. Maximum deductible amounts for such policy shall be determined by the Executive Board; provided, however, that if any Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. The Association shall obtain insurance covering the original specifications of each Unit. Each Owner shall be required to obtain additional or supplemental insurance covering any additions, alterations or improvements to his Unit that increase the replacement value of his Unit. In the event that a satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 hereof in the event the Association pays such premium for an Owner. The Association shall also maintain appropriate construction code endorsements to the extent local law and building codes would require changes to undamaged portions of the building in the event of partial destruction of the Project. To the extent there may now or hereafter be a steam boiler on the Premises, the policy shall cover loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident location.

10.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance in such amounts as the Executive Board deems desirable, and as required by any applicable Agency, insuring the Association, the Executive Board, the Manager or managing agent or both, if any, and their respective agents and employees, and the Unit Owners from liability (including property damage, bodily injury and death) in connection with the operation, maintenance and use of the Recreational Facilities, Common Elements and public ways about the Project, including a “severability of interest” clause or specific endorsement, shall be maintained. 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 condominiums similar to the Project in the Town area including automobile liability insurance if appropriate. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current satisfactory insurance, including worker’s compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

- 10.2 Form. The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner’s interest in a Unit or in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit that the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner’s household. No act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association’s policy shall provide primary insurance. The policy shall recognize any insurance trust agreement. Said policies are unacceptable where (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, an Agency or its designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Agency, or the borrowers from collecting insurance proceeds
- 10.3 Qualifications of Insurer. Subject to section 10.2 above, such policies must respectively be written by an insurance carrier that has (a) a “B” or better general policyholder’s rating or a “6” or better financial performance index rating in Best’s Insurance Reports; (b) an “A” or better general policyholder’s rating and a financial size category of “VIII” or better in Best’s Insurance Reports International Edition; or (c) is generally acceptable to the requirements of an Agency as provided under FNMA conventional home mortgage selling contract supplements and the FHLMC Seller’s Guide.
- 10.4 Owners’ Insurance. Insurance coverage on: the furnishings and other items of personal property belonging to an Owner; and any additions and alterations to a Unit which increase the Unit’s

replacement value above that of the original specifications for the Unit (unless financed by a Mortgage to be purchased by FNMA or FHLMC); and casualty and public liability insurance for each Unit and Worker's Compensation for the work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. In addition, insurance costs may be assessed to a particular Unit or Units in proportion to any particular risk associated with that particular Unit or the uses occurring therein.

- 10.5 Certificates of Insurance; Cancellation. The Association shall issue certificates of insurance to each Owner and Mortgagee upon written request to the Association. All policies required to be carried under this Article X 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 cancelled by the insurance company without at least thirty (30) days prior written notice to each Owner and each Eligible Mortgagee whose address is shown in the records pursuant to the Association's Documents. If the insurance described in Article X 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 shall promptly cause notice of that fact to be hand delivered or sent prepaid via United States mail to all Owners and to all Eligible Mortgagees.
- 10.6 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any Insurance Trustee as provided under section 10.10 below designated for that purpose, or otherwise to the Association, and not to 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 10.8 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 regime created by this Declaration is terminated.
- 10.7 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Sections 10.1, 10.2 & 10.9, or its agent shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Eligible Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses, and to any servicer of any other Eligible Mortgagee. The Association's insurer, when determining premiums to be charged to the Association, shall not take into account any request by a Unit Owner for a clarification of coverage.
- 10.8 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.8.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of at least sixty-seven percent (67%) of all Unit Owners then holding votes in the Association;

10.8.2 Repair or replacement would be illegal under any federal, state or local statute or ordinance governing health or safety;

10.8.3 There is a vote not to rebuild by (a) Owners holding at least sixty-seven percent (67%) of the votes of the Association, and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

10.8.4 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 Common Expense. If all 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, as their interests may appear in proportion to each Unit's Allocated Interests.

- 10.9 Common Expenses. Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's property and extended coverage insurance covers fixtures, equipment or other property within or associated with some but not all of the Units (as required by any Agency including FNMA or FHLMC), or other insurance attributable to some but not all of the Units (such as the Parking Spaces), the Association reserves the right to charge the Owner(s) of such Unit(s) for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Association.
- 10.10 Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the owners Association, the owners Association's authorized representative, including any trustee with whom such owners Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each unit owner also appoints any Insurance Trustee or substitute Insurance Trustee designated by the owners Association, as attorney-in-fact as provided under subsection (b) to Article XIV.
- 10.11 Flood Insurance. Should the Project now or hereafter be located within a area officially identified by HUD as having a special flood hazard and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the owners association shall

obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the owners association, but not less than the following: the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement cost of all such buildings and other insurable property within such area. Such policy shall be in a form that meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

10.12 Workers' Compensation Insurance. The Executive Board shall obtain Workers' 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 Fidelity Coverage. If any Unit Owner or employee of an association with thirty (30) or more units controls or disburses funds of the common interest community, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current assessments plus reserves, as calculated from the current budget of the association. Any person employed as an independent contractor by an Association with thirty (30) or more Units for the purposes of managing a common interest community must obtain and maintain fidelity insurance in an amount not less than the amount specified above, unless the Association names such person as an insured employee in a contract of fidelity insurance. The Association may carry fidelity insurance in amounts greater than stated above and may require any independent contractor employed for the purposes of managing a common interest community to carry more fidelity insurance coverage as well. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

10.14 Other Insurance. The Association may maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a member of the Executive Board or incurred by him in his capacity of or arising out of his status as a member of the Executive Board. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by an Agency.

ARTICLE XI ASSESSMENTS

11.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay the Association all: (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments described below.

11.2 Budget. As said requirements may be amended by under the Act from time to time, the Executive Board shall adopt a proposed budget for revenues, expenditures and reserves for the Project and shall submit the budget to the Owners as provided herein no less frequently than

annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Within ninety days after adoption of any proposed budget for the common interest community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners (including via email to an email address expressly supplied by the Unit Owner, or where the Owner expressly acknowledges receipt in response to the budget email) and shall set a date for a meeting of the Unit Owners to consider the budget such meeting shall occur within a reasonable time after mailing or other delivery of the summary or as allowed for in Article III of the Bylaws (*not less than fourteen nor more than sixty days*). The Executive Board shall give notice to the Unit Owners of the meeting as allowed for in the bylaws. The budget proposed by the Executive Board does not require approval from the Unit Owners and it will be deemed approved by the Unit Owners in the absence of a veto at the noticed meeting by a majority of all Unit Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Unit Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Unit Owners.

11.3 Annual Assessments.

11.3.1 Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements, as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 11.2 above. The first Annual Assessment shall commence upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser, unless the every Unit in the entire Project is sold as a whole, in which event the first Assessment shall occur until the date of the first closing on the sale or transfer of a Unit to any party other the transferee of the whole Project. Estimated Common Expenses shall include the cost of routine maintenance and operation of the Common Elements including, but not limited to that portion of real property taxes, if any, attributable to the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the General Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within the Common Elements, wages, water, sewer service and common utility charges, snow removal including plowing, trash removal, recycling charges, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles in general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed. Should any taxing authority ever assess a tax upon the Common Elements, apart from each Unit, same shall be borne by each owner in accordance with their Allocated Interest.

11.3.2 Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month; provided, however, that the Association may, with the consent of Owners holding a majority of votes in the Association, designate any other installment period. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of

the Owners of their obligation to pay same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

11.3.3 Assessment Escrow Agreements. The Association may enter into an escrow agreement with the holder of a Unit Owner's mortgage so that assessments may be combined with the Unit Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency

- 11.4 Apportionment of Annual Assessments. The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Board, and Association, in adopting the budget and assessments from time to time reserves the right to adjust and allocate expenses relating to particular Units to the Owners of those affected Units only based upon, without limitation: (i) expenses associated with Limited Common Elements appurtenant to that Unit; and/or (ii) increased insurance risk associated with a Unit or the use therein; and/or (iii) utilities in proportion to usage associated with that Unit as may be determined by meter readings, if available, or some other reasonable, tangible criteria associated with use or occupancy. To that end, so long as adhering to those criteria, to the extent certain Units may not be exactly the same size, assessments for such Units may be grouped together for calculation and their respective assessments set in the same amount.
- 11.5 Special Assessments. In addition to the Annual 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 or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.5 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 shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units; to wit, any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall borne by that Owner. 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 ten (10) days after such notice shall have been given.
- 11.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment. Notice in writing of the amount of such Default Assessment and the

time for payment of the Default Assessment shall be given promptly to the Owners and no payment shall be due less than ten (10) days after such notice shall have been given. If payment is not made on or before the date set forth in such written notice, the Default Assessment shall become a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in this Declaration and the Act.

- 11.7 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date, shall become delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:
- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
 - (ii) Assess an interest charge from the due date at the yearly rate of six (6) percentage points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish, not to exceed the maximum rate allowable under the Act;
 - (iii) Suspend the voting rights of the Owner during any period of delinquency;
 - (iv) Accelerate the remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year or other predetermined assessment period shall be due and payable at once;
 - (v) Subject to the Association Policy on the collection of delinquent assessments and Section 209.5 of the Act, bring an action at law against any Owner personally obligated to pay the delinquent assessments; and
 - (vi) Subject to the Act, proceed with foreclosure as set forth in more detail below.
 - (vii) Suspend the Owner's rights to use specific General Common Elements, including the Recreational Facilities, of any nature benefiting all Units.

Subject to Section 17.1 below, Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado; except that the Association or a holder or assignee of the Association's lien, whether the holder or assignee of the Association's lien is an entity or a natural person, may only foreclose on the lien if: (a) The balance of the assessments and charges secured by its lien, as defined in this subsection, equals or exceeds six months of Common Expense Assessments based on a periodic budget adopted by the Association; and (b) the Executive Board has formally resolved, by a recorded vote, to authorize the filing of a legal action against the specific Unit on an individual basis. The Board may not delegate its duty to act under this section to any attorney, insurer, manager, or other person, and any legal action filed without evidence of the recorded vote authorizing the action must be dismissed. No attorney fees, court costs, or other charges incurred by the Association or a holder or assignee of the Association's lien in connection with an action that is dismissed for this reason may be assessed against the Unit Owner.

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. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

- 11.8 Personal Obligation. Each Assessment against a Unit is the personal obligation of the person or persons who owned the Unit at the time the Assessment became due and shall also pass to successors in title only if they assume same in writing or if required by local law. BY ACCEPTANCE OF A DEED FOR A UNIT, EACH UNIT PURCHASER THEREBY CONSENTS TO ASSUME THE JOINT OBLIGATION FOR ALL ASSESSMENTS DUE AGAINST THE UNIT PURSUANT TO THIS SECTION. No Owner may exempt themselves from liability for the Assessment by abandonment of their 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, and 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. This Section 11.8 is subject to the Mortgagees' Rights set forth in Section 17.1 below. In connection with any demand for payment or proceeding to collect any money or sums due to the Association, the Association may require reimbursement for its collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.
- 11.9 Payment by Mortgagees. Any Mortgagee holding a lien on a Unit may paid any unpaid assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.
- 11.10 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt requested, any Owner, designee of an Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. THE STATEMENT SHALL BE FURNISHED WITHIN FOURTEEN (14) CALENDAR DAYS AFTER RECEIPT of the request and is binding upon the Association, Executive Board and every Owner. If no such statement is mailed out certified, return receipt requested, first class postage (or personally delivered) to the inquiring party within that fourteen (14) day period, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.
- 11.11 Capitalization of the Association. The Association shall establish an initial WORKING CAPITAL FUND EQUAL TO THREE-TWELFTHS (3/12) OF THE ESTIMATED ANNUAL ASSESSMENTS for Common Expenses for each Unit subject to the terms of this Declaration. The working capital fund may be used by the Association for emergencies, insurance deductibles

in the event of casualty or other loss, capital expenditures for repair or replacement of Common Elements, and such other expenses which do not occur on a regular and ongoing basis, as may be determined by a majority of the Executive Board. The initial working capital fund shall be established and Annual Assessments shall commence upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser, unless the every Unit in the entire Project is sold as a whole, in which event the first assessment and capital fund shall occur until the date of the first closing on the sale or transfer of a Unit to any party other the transferee of the whole Project. Thereafter, Annual Assessments and the capital account shall be established in accordance with the provisions of the Declaration. Upon acquisition of record title to a Unit from Declarant, each such new Owner shall contribute to the working capital fund of the Association an amount equal to three-twelfths (3/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the new Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The working capital fund deposit made by Owners shall be non-refundable from the Association and Owners shall be entitled to seek reimbursement for same from subsequent purchasers. In the event Declarant pays into the working capital fund on behalf of a Unit prior to the initial sale of the Unit to an Owner, the new Owner shall reimburse such amount to Declarant upon the transfer of title to the Unit and the Owner's contribution to the Association's working capital fund hereunder shall be reduced by such amount. The working capital fund may be maintained by the Association in a segregated account, and in any event shall not be used by the Declarant to defray any of its expenses, reserve contributions, or construction costs.

- 11.12 Maintenance Accounts; Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager 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 Manager; (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, if required by the Association; (c) provide to the Association no less than once per month, an accounting for the previous month, including a budget/actual reconciliation report and; (d) provide to the Association an annual accounting and financial statement, including a budget/actual reconciliation report, of Association funds prepared by a certified public accountant.

ARTICLE XII DAMAGE OR DESTRUCTION

- 12.1 The Role of the Executive Board. Except as provided in Section 10.8, in the event of damage to or the destruction of all or any part of any Common Element, improvement or other property covered by insurance written in the name of the Association under Article X, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article X is sometimes referred to as the "Association-Insured Property").
- 12.2 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 Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable

and complete of the costs of repair and reconstruction. "Repair and Reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the provisions of Section 10.7 apply and approval is obtained by a fifty-one percent (51%) vote of the First Mortgagees of Units subject to First Mortgages (which percentage is measured by the votes allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

- 12.3 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 damages 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.
- 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any property insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, levy, assess and collect from the Owners without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in a like manner if the amounts to be collected prove insufficient to complete the repair, replacement or reconstruction.
- 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from the insurance proceeds, the balance from Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in accordance with the Units' Allocated Interests, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE XIII CONDEMNATION

- 13.1 Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain, or whenever all or any part of the Common Elements are conveyed, in lieu of a taking under threat of condemnation, by the Executive Board acting as attorney-in-fact for all Owners under 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.

- 13.2 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 under the Act, the award shall be distributed as follows:

Unless within sixty (60) days after such taking, Declarant and/or Owners who combined represent at least sixty-seven percent (67%) of the votes in the Association and fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by the votes allocated to such Units) shall otherwise agree, if the taking involves a portion of the Common Elements on which improvements have been constructed, 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 Executive Board. If such improvements are to be repaired or restored, the provisions in Article XII above regarding the disbursement of funds in respect to casualty damage or destruction that is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision 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 distributed among the Units according to the relative value of each Unit which shall be in accordance with each Unit's Allocated Interests, first to the Mortgagees and then to the Owners, as their interests appear.

- 13.3 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 regime created by this Declaration shall be deemed terminated thereby, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.5 above.

ARTICLE XIV ASSOCIATION AS ATTORNEY-IN-FACT

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 Article VIII; (b) purchasing and maintaining insurance pursuant to Article X, 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 insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article X upon their damage or destruction as provided in Article XII; or (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 XIII above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying a 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 which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE XV
RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

Notwithstanding any provision in this Declaration to the contrary, the rights reserved to Declarant in this Article may be exercised by Declarant without the consent of the Association, or of the Owners or Eligible Mortgagees of Units not owned by Declarant.

- 15.1 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant to withdraw from the provisions of this Declaration individual Units and/or Common Elements; however, none of the real estate may be withdrawn after any Unit is conveyed by Declarant to a purchaser.
- 15.2 Reservation of Subdivision Rights. Pursuant to the Act, Declarant reserves the right for itself and any Successor Declarant to subdivide or convert a Unit that it owns into additional Units, Common Elements or a combination of same.
- 15.3 Create Limited Common Elements. Declarant reserves the right to create Limited Common Elements from time to time by: (1) converting existing General Common Elements, or (2) causing additional improvements to be made as part of Limited Common Elements. Additional Limited Common Elements shall be appurtenant to a particular Unit(s) upon recording in the office of the Clerk and Recorder an amendment to this Declaration executed by Declarant that identifies the Limited Common Element by reference to the Map and the Unit to which it is allocated.
- 15.4 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant:
- (a) to convert General Common Elements, including Parking and Storage Spaces, to Limited Common Element Parking and/or Storage Spaces, to allocate Limited Common Element Parking and Storage Spaces to particular Units by assignment and/or recorded amendment to this Declaration; and to reallocate Limited Common Elements among units to which it retains title; and to reconfigure common element parking so as to be in compliance with Federal, State or local law, including zoning, parking and building regulations.
 - (b) to complete improvements called for or anticipated herein and/or on the plats and Maps;
 - (c) with respect to Units still owned by the Declarant, the right to modify, alter, move and relocate Unit or Common Element walls, floors and ceilings within or between such Units;
 - (d) to maintain and relocate sales offices, management offices, signs advertising the Project and Units, and models of any size, within one or more of the Units and within the General Common Elements;
 - (e) to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant control as set forth and limited in Section 5.4 above;
 - (f) Those easements reserved in favor of Declarant and described in Article VIII herein;

- (g) The right to establish, from time to time, by dedication or otherwise, utility and other easements for the purposes, including but not limited to streets, paths, walkways, sidewalks, drainage, Recreational Facilities, parking areas, storage areas, driveways, ducts, shafts, flues, conduit installation areas and to create other reservations, exceptions and exclusions for the benefit of, and to serve, the Owners within the Project.
- (h) The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking, storage, Recreational Facilities and/or Common Elements, which may or may not be a part of the Project, for the benefit of the Owners and the Association; as well as such licenses, leases, easements or other agreements it sees fit with and for use by the Association, Owners, mortgagees, tenants, occupants and/or third parties outside of the Project who do not own a Unit.
- (i) Declarant also reserves any development rights created by any administrative, judicial or legislative action, including but not limited to any change in zoning regulations or rules, change in bulk plane limitations or any other rule or regulation adopted by any entity of state or federal government that establishes development rights to property in addition to those now existing for any defined Unit or the Project as a whole.
- (j) Declarant shall be free to convey, transfer or sell its retained development rights subject to all the terms herein.
- (k) To add or expand the size of the Recreational Facilities.
- (l) To lease out without the consent of the Board or Association any number of the remaining Units it owns, regardless of the requirements and provisions of Sections 4.2 & 5.10.
- (m) To add a ground level patios or a roof deck or balconies from the Units or the Building, appurtenant to particular Units, and/or add patios about the Property, appurtenant to particular units, either as General or Limited Common Elements.
- (n) The right to amend the Declaration and/or Map to conform with any revisions to Unit addressing; and/or numbering imposed by the relevant addressing authorities of the County and Town; or in exercising any express reserved right hereunder.
- (o) The right to amend the Declaration and/or Map to conform with any amendment to the Restrictive Covenant and/or the location and numbering of the Restricted Units.

15.5 Change in Allocated Interests. In the event Declarant or Successor Declarant exercises the right to add, withdraw or subdivide Units as set forth above, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

- 15.6 Declarant's Property. The Declarant reserves the right to retain all its property and equipment used in the sales, management, construction and maintenance of the Property, whether or not they have become fixtures.
- 15.7 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.
- 15.8 Termination of Rights. Unless otherwise provided herein or required by the Act, the rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire on the earlier of: (a) the date Declarant transfers the last Unit it owns, other than to a Successor Declarant; or (b) ten (10) years from the date of first conveyance of a Unit to its first purchaser; unless (i) such rights are extended as allowed by law; or (ii) reinstated or extended by the Association, subject to those terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE XVI
ARCHITECTURAL CONTROL AND DESIGN REVIEW

- 16.1 Common Elements. Except for Declarant's reserved rights as hereinabove described, no alteration or additions to the Common Elements of any kind shall be made unless first approved in writing by the Executive Board, including, without limitation, structural, textural and color changes to walls, doors and windows. The Executive Board shall exercise reasonable judgment to insure that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes that the Executive Board reasonably determines do not conform to and harmonize with the existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.
- 16.2 Architectural Review. The Executive Board shall be responsible for the establishment and administration of Design Guidelines (the "Design Guidelines") to carry out the purposes and intent of this Declaration. The Executive Board may seek the advice of design professionals or other professionals if the need should arise. The Executive Board may adopt, establish and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be an Association document, the terms of which shall be complied with by all Owners. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project, including, but not limited to, items such as color, texture, structure, size, design, appearance, window coverings, antennae, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by a majority approval of the Executive Board and shall be made available to all Owners and their representatives for their review. Further, the Executive Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process and design standards is not a substitute for compliance with Town or County building, zoning and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to

commencing construction. In the event of a conflict between the terms of this Declaration and the Design Guidelines, the terms of this Declaration shall control. Decisions concerning the approval or denial of a Unit Owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the Declaration or in duly adopted Rules and Regulations, written policy or Bylaws of the Association, and shall not be made arbitrarily or capriciously.

- 16.3 Requirement for Approval. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Common Elements, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Common Elements until plans and specifications with respect thereto satisfactory to the Executive Board showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owners' request for approval within sixty (60) days of the submission by Owner of all information requested by the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Non-structural improvements and alterations that are completely within an existing Unit may be undertaken without such approval, by and at the cost of the Owner. All such improvements shall be insured by and at the cost of the Owner. An Owner undertaking such improvements shall indemnify the Association and the other Owners against any and all costs or damages attributable to the construction or existence of such improvements.
- 16.4 Violation. The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered or maintained in violation of these covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal. Failure to timely reimburse the Association shall be deemed a Default Assessment with payment thereof subject to the provisions of Article 11.6.
- 16.5 Criteria for Approval. The Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and that the upkeep and maintenance of the proposed improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, easements and utilities, and such other information as may be requested –and approved in writing- by the Executive Board.
- 16.6 Fees. An Owner seeking architectural review approval shall promptly pay to the Association any fees set by the Executive Board in connection with the review process, and shall reimburse the Association for all of its costs relating to review and ongoing monitoring of construction,

including the costs of staff and independent consultant review and assistance, as determined by the Association. The Association may assess these fees and costs against the Owner and the Unit as Default Assessments in the event the Owner fails to timely pay these fees and costs.

ARTICLE XVII MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of any Mortgages on Units. To the extent permitted under Colorado law and, as applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and rules and regulations of the Association.

- 17.1 **Title Taken by Mortgagee.** Any Mortgagee holding any Mortgage of record against a Unit who obtains title to the 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 WHICH BECOME DUE AND PAYABLE AFTER THE DATE TITLE TO THE UNIT IS ACQUIRED AND FOR THOSE ANNUAL ASSESSMENTS ACCRUED DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE TITLE TO THE UNIT IS ACQUIRED.** The lien of the Association for unpaid Assessments shall not have priority over a Mortgage in the amount of over six (6) months of regular Common Expense Assessments. A Mortgagee or Agency that acquires title to a Unit through foreclosure of a Mortgage will not be liable for any fees or charges related to the collection of the six (6) months of unpaid Assessments that accrued before the Mortgagee or Agency acquired title to the Unit.
- 17.2 **Distribution of Insurance or Condemnation Proceeds.** In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a Mortgage against a Unit.
- 17.3 **Right to Pay Taxes and Charges.** Mortgagees who hold Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Eligible Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.
- 17.4 **Audited Financial Statement.** Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit of the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.
- 17.5 **Notice of Action.** Any First Mortgagee, holder or secured party which holds, insures or guarantees a First Mortgage or first security interest and who makes **PRIOR WRITTEN REQUEST TO THE ASSOCIATION** requesting that they be provided notice (which shall

include the address and the number of the Unit secured) will be deemed an “Eligible Mortgagee” and be entitled to timely written notice of the following (note: this applies only where specific reference is made to Eligible Mortgagees throughout this document; and where applicable, if no written request is submitted, that Mortgagee shall not be entitled to notice or participation and their consent to all amendments deemed implied):

17.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit, or the exclusive easement rights pertaining thereto; (b) the interest in the Common Elements appurtenant to the Unit, or the liability of Assessments relating thereto; (c) the vote in the Association relating to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 18.2 below;

17.5.2 Any proposed termination of the common interest community (except as provided in Section 13.3);

17.5.3 Any condemnation loss or any casualty loss which effects a material portion of the Project or which affects any Unit on which there is a Mortgage held, insured or guaranteed by such Agency (except as provided in Section 13.3);

17.5.4 Any delinquency in the payments of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days; and

17.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article X, herein.

17.6 Notice to, and Action by Eligible Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees and the Eligible Mortgagee has requested it be notified then dated, written notice and a copy of any relevant proposed amendment, document or action, shall be sent via certified mail to the mortgagee at the address on its recorded deed of trust or assignment thereof. If any Eligible Mortgagee fails to deliver a negative response within sixty (60) days after the date of notice, the Eligible Mortgagee shall be deemed to have approved the amendment, document or action. Note, however, that the procedure set forth above is not mandatory, and if the consent of any mortgagee is nevertheless actually obtained in writing without resort to this process, the notice to that mortgagee shall be deemed sufficient. Except as provided herein or under the Act, Mortgagees who are not Eligible Mortgagees, shall not be entitled to such notice or have any right to object to any such action.

ARTICLE XVIII DURATION OF COVENANTS AND AMENDMENT

18.1 Term. The covenants and restrictions of this Declaration shall run with and bind the project in perpetuity, subject to the termination provisions of the Act. Except as otherwise provided herein, the consent of Owners holding at least sixty-seven percent (67%) of the votes in the Association and the approval of Eligible Mortgagees of Units to which at least sixty-seven percent (67%) of the votes in the Association appertain, shall be required to terminate this condominium regime.

- 18.2 Amendment. Except for amendments otherwise permitted to be undertaken by Declarant hereunder, or pursuant to the Act, this Declaration, the Map or any provision of it may be amended at any time (a) by the affirmative vote or agreement of Owners holding sixty-seven percent (67%) of the votes in the Association; and (b) provided an Eligible Mortgagee has requested notice in accordance with Section 17.5 above, the approval of fifty-one percent (51%) of Eligible Mortgagees of Units subject to a First Mortgage (which percentage is measured by the votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions which establish, provide for, govern or regulate any of the following:
- 18.2.1 Voting and quorum requirements;
 - 18.2.2 Assessments, Assessment liens or subordination of such liens;
 - 18.2.3 Reserves for maintenance or repair and replacement of the Common Elements;
 - 18.2.4 Insurance or fidelity bonds;
 - 18.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements other than as set forth in Article XV;
 - 18.2.6 Responsibility for maintenance and repair of the Project;
 - 18.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community, subject to the Act and C.R.S. 38-33.3-221.5;
 - 18.2.8 Boundaries of any Unit;
 - 18.2.9 The interests in the Common Elements;
 - 18.2.10 Convertibility of Common Elements into Units, or of Units into Common Elements, or of a General Common Element into a Limited Common Element, or of a Limited Common Element into a General Common Element (which in all cases regarding the conversion of a Unit or Limited Common Element shall also require the consent of the Unit Owner or Owner of the Unit to which said Limited Common Element has been allocated); The procedure regarding the reallocation of Limited Common Elements is further described in Article III herein;
 - 18.2.11 Imposition of any restrictions on the leasing of Units;
 - 18.2.12 Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Unit;
 - 18.2.13 Establishment of self-management by the Association where professional management has been required by an Agency or Colorado law;

18.2.14 Any provision which is for the express benefit of an Agency or Eligible Mortgagee, regardless of whether the amendment is material;

18.2.15 Hazard or fidelity insurance requirements; and

18.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein and not limited only to Eligible Mortgagees.

18.2.17 The provisions herein limiting certain claims and regarding binding Arbitration in certain instances as provided in Article V above –which in any event shall also require (a) the express written consent of the Declarant and general contractor hired by the Declarant in connection with improvements made to the Project upon its conversion to condominium hereunder, regardless of whether or not said Declarant still owns a Unit, to the proposed amendment; and (b) be subject to any terms that may apply under the Articles of the Association.

18.2.18 Any provisions herein, including under Article XV, which confer a reserved right upon the Declarant, but only with the express written consent of the Declarant.

18.3 Amendment Procedure. Any amendment must be executed by the President of the Association and recorded in the real property records of the Clerk and Recorder, 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 to the Amendment; as further required under Section 217 of the Act. 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 under this Declaration and the Act, including without limitation:

18.3.1 Declarant may amend the Declaration, a plat or a Map without the consent of any Owner or the Association to correct clerical, typographical errors or technical errors, or in accordance with any Reserved Development Rights under Article XV herein;

18.3.2 Declarant hereby reserves the right to itself and the Association, without requiring or obtaining the consent of any Owner or Eligible Mortgagee, to amend the Map and Declaration in order to conform said Map to the actual location of any improvement(s) constructed, installed or erected on the Property; to establish and designate any Units or Common Elements as Limited Common Elements; and to effect and reflect any Declarant reserved right. The rights accorded to Declarant in this Paragraph shall expire on the date of the conveyance, by Declarant, of the last Condominium Unit within this Project to the first purchaser thereof; and

18.3.3 Declarant may amend the Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets or Agencies as well as any requirements imposed by Federal, State or local law including zoning and building compliance.

**ARTICLE XIX
LIMIT ON TIMESHARING**

No owner of any Unit shall offer or sell an interest in such a Unit under a “timesharing” or “interval ownership” plan, or any similar plan.

**ARTICLE XX
GENERAL PROVISIONS**

- 20.1 **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 under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole, but shall be adjusted as is necessary to comply with the Act.
- 20.2 **Enforcement.** Except as otherwise provided or limited in this Declaration or the Act, the Executive Board, Declarant or 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 the Declaration. Failure by the Executive Board of the Association, Declarant or by 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.
- 20.3 **Severability; Inconsistent Provisions.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect; and should any provision or period of time for performance or delivery set forth herein be inconsistent with the Act or any other applicable governmental law, regulation or ordinance, then that provision or period shall be deemed amended to the applicable requirements.
- 20.4 **Conflicts Between Documents.** In the case of any conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control, then the Articles, then the Bylaws, then any other duly approved corporation document but only to the extent the instrument attempts to directly invalidate the express language of the priority instrument.

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EXHIBIT "A"

20 Marcellina Trail, Mt. Crested Butte, Colorado

Lot 1 of Marcellina Centre,
Town of Mt. Crested Butte,
Gunnison County, Colorado.

EXHIBIT “B”

THE TIMBERS

Allocated Interests in Common Elements and in Common Expenses per Section 2.2.1 and 2.2.2

UNIT NO.	ALLOCATED INTEREST IN COMMON ELEMENTS; AND ALLOCATED SHARE OF COMMON EXPENSES
1	2.07%
2	2.19%
4	2.19%
6	2.19%
8	2.19%
10	2.19%
12	2.19%
14	2.85%
100	2.19%
101	2.19%
102	2.19%
103	2.19%
104	2.19%
105	2.19%
106	2.19%
107	2.19%
108	2.19%
109	2.19%
110	2.19%
112	2.85%
200	2.19%
201	2.19%
202	2.19%
203	2.47%
204	2.19%
205	2.19%
206	2.19%
207	2.19%
208	2.19%
209	2.47%
210	2.19%
212	2.85%

300	2.19%
301	2.19%
302	2.19%
303	2.47%
304	2.19%
305	2.19%
306	2.19%
307	2.19%
308	2.19%
309	2.47%
310	2.19%
312	2.85%

Per Section 2.2.3, Voting called for in the Association Documents shall be one vote per Unit.

EXHIBIT "C"
Title Exceptions

Stewart Title file no. 01330-66916- Amendment No. C4

(a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Minerals of whatsoever kind, subsurface and surface substances, in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records or listed in Schedule B.

Water rights, claims or title to water.

Any and all unpaid taxes and assessments and any unredeemed tax sales.

The effect of inclusions in any general or specific water conservancy, fire protection, soil conservation or other district or inclusion in any water service or street improvement area.

Reservations or exceptions contained in U.S. Patents, or in Acts authorizing the issuance thereof, recorded in Book 101 at Page 373.

Reservation of a non-exclusive easement and right-of-way for construction, maintenance and use as a road in deed recorded in Book 455 at Page 47.

Reservation of a non-exclusive easement and right-of-way for construction, maintenance and use as a road in deed recorded in Book 531 at Page 207 and in deed recorded in Book 572 at page 248.

Reservation of all oil, gas and other minerals, in, on or under and that may be produced from the subject property in the instrument recorded in Book 752 at Page 221, together with the appurtenant rights to use the surface. The Company makes no representation as to the present ownership of this interest.

All matters shown on the plat of Town of Mt. Crested Butte recorded at Reception No. 301771.

Town of Mt. Crested Butte Subdivision Regulations recorded in Book 489 at Page 533.

Restrictive Covenant recorded December 9, 1999 as Reception No. 498281 and as amended per instrument recorded _____ as Reception No. _____.

Utility Easement recorded December 22, 1999 as Reception No. 498572.

Memorandum of Agreement recorded April 7, 2000 as Reception No. 500904 and Amendment and Modification of Marcellina Employee Housing Agreement recorded November 22, 2005 as Reception No. 560837 and Amendment recorded March 31, 2008 as Reception No. 583027.

Reciprocal Easement and Access Agreement recorded January 16, 2014 as Reception No. 625193.

All matters as shown on the Plat of Marcellina Centre recorded December 31, 2013 as Reception No. 624971.