



**THE  
CONDOMINIUM DECLARATION  
OF  
THE MOUNT VICTORIA LODGE**

THIS DECLARATION is made on the date hereinafter set forth, by MT. ROYAL LODGE, LLC, a Colorado Limited liability Company ("Declarant").

WHEREAS, Declarant is the owner of certain real property located in Frisco, Colorado, as more particularly described on Exhibit A attached hereto and incorporated herein by reference: and

WHEREAS, the Declarant intends to construct a Commercial and Residential (mixed use) Condominium Community on said real property together with others improvements thereon; and

WHEREAS, Declarant will convey said real property, subject to the protective covenants, restrictions, reservations and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby submits the real property described on Exhibit A attached hereto, together with all easements, rights, and appurtenances thereto and improvements thereon to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., as it may be amended from time to time. In the event the said Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

Declarant hereby declares that all of the said real property described on Exhibit A shall be held or sold, and conveyed subject to the following covenants, conditions and obligations, all of which are declared and agreed to be for the protection of the value of the said real property, and for the benefit of any persons having any right, title or interest in the said real property and which shall be deemed to run with the land and shall be a burden and a benefit to any persons acquiring such interest, their grantees, heirs, legal representatives, successors and assigns.

**ARTICLE ONE: DEFINITIONS**

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ACT means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-131, et seq. as it may be amended from time to time.

1.2 ALLOCATED INTERESTS means the interest in the Common Elements and the Common Expense liability which is allocated to each of the Units in the Condominium Community. The formulas used to establish the Allocated Interests are as follows:

(a) Interest in the Common Elements. The undivided ownership interest in the Common Elements appurtenant to a particular Condominium Unit has been determined on the basis of the

proportion which the approximate square footage finished area of each Unit bears to the total approximate square footage finished area of all Units then in the Condominium Community and is as set forth on the attached Exhibit B.

(b) Common Expense Assessment Liability. All Common Expenses shall be assessed against Units on the basis of the proportion which the approximate finished square footage area of each Unit bears to the total approximate finished square footage area of all Units then in the Condominium Community and is as set forth on the attached Exhibit B. The finished square footage area of each Unit is determined and allocated by the Declarant and is based upon dimensions which are approximate and the calculation of the percentage interest has been rounded. The finished square footage is measured in a uniform, consistent manner throughout the Condominium Community. This square footage may differ from the square footage as measured for sales or taxation purposes.

(c) Votes. Each Unit in the Condominium Community is entitled to the number of votes calculated in accordance with Paragraph 4.5 hereof.

1.3 ARTICLES means the Articles of Incorporation of the Association as they may be amended from time to time.

1.4 ASSESSMENTS means the (a) Common Expense Assessment, (b) Special Assessment, (c) individual Assessment, (d) Garage Assessments, and Fines levied pursuant to this Declaration.

1.5 ASSESSMENT LIEN means the statutory lien on a Unit for any Assessment levied against that Unit together with all Cost of Enforcement as herein defined. All Costs of Enforcement are enforceable as Assessments. If an Assessment is payable in Installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The recording of this Declaration constitutes record notice and perfection of the lien. No further recordation or claim of lien for the Assessment is required.

1.6 ASSOCIATION means THE MOUNT VICTORIA LODGE ASSOCIATION, a Colorado Corporation, not for profit, organized pursuant to § 38-33.3-301 of the Act, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of the Condominium Community, the Members of which shall be all of the Owners of the Units within the Condominium Community.

1.7 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association and shall act on behalf of the Association. The term Board of Directors as used herein is synonymous with the term Executive Board as the latter term is used in the Act.

1.8 BUILDING means the building comprising part of the Condominium Community.

1.9 BYLAWS means the Bylaws which are adopted by the Board of Directors for the regulation and management of the Association, as they may be amended from time to time.

1.10 CITY means the Town of Frisco, Colorado.

1.11 COMMERCIAL UNIT(S) means the Condominium Units designated by numerical reference on the Map, including by the designations "Unit 1", "Unit 2" and "Unit 3", all of which Units shall be used and occupied solely for commercial purposes.

1.12 COMMON ELEMENT means all of the Condominium Community, as hereinafter defined, except the portions thereof which constitute Condominium Units, and also means all parts of the Buildings or any facilities, improvements and fixtures which may be within a Condominium Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the Building or any part thereof to any other Condominium Unit therein and includes those Common Elements which are assigned to the exclusive use of one or more, but not all of the Condominium Unit Owners. Without limiting the generality of the foregoing, the following shall constitute Common Elements:

- (a) all of the land, landscaping, all parking spaces, covered parking areas, drives, driveways and easements which are a part of the Condominium Community; and
- (b) all foundations, columns, girders, beams and supports of the Building; and
- (c) the exterior walls of the Building, the main or bearing walls within the Building, the main or bearing subflooring and the roofs of the Building; and
- (d) all stairs, stairways and walkways not within a Condominium Unit; and
- (e) all utility, service and maintenance rooms, fixtures, apparatus, installations and central facilities for power, light, gas, telephone, television, hot water, cold water, heating, incineration, or similar utility, service or maintenance purposes, including furnaces, apparatus, installations, facilities, all of which serve more than one Unit and are not located within a Unit; and
- (f) in general, all other parts of the Condominium Community necessary in common use or convenient to its existence, maintenance and safety.

Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Elements will be void unless the Unit to which the interest is allocated is also transferred.

1.13 COMMON EXPENSE ASSESSMENTS means those assessments defined in Paragraph 5.2 hereof.

1.14 COMMON EXPENSE ASSESSMENT LIABILITY means the liability for Common Expenses allocated to each Unit which is determined in accordance with that Unit's Allocated Interests as set forth in Paragraph 1.2(b) hereof.

1.15 COMMON EXPENSES means expenditures made by or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including, but not by way of limitation, expenses for operation of common utilities such as gas fired house boilers and/or house electrical service panels.

1.16 CONDOMINIUM COMMUNITY means all of the Property and the improvements located thereon.

1.17 CONDOMINIUM UNIT or UNIT means the fee simple interest and title to a Condominium Unit together with the undivided interest in the Common Elements appurtenant to such Condominium Unit and all other rights and burdens created by this Declaration.

1.18 COSTS OF ENFORCEMENT means all fees, late charges, interest, expenses, including receiver's fees, and reasonable attorneys' fees and costs incurred by the Association (a) in connection with the collection of the Assessments and Fines, or (b) in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

1.19 COUNTY means Summit County, Colorado.

1.20 DECLARANT means MT. ROYAL LODGE, LLC, a Colorado Limited Liability Company, or its successors as defined in § 38-33.3-103(12) of the Act.

1.21 DECLARATION means THE CONDOMINIUM DECLARATION OF THE MOUNT VICTORIA LODGE, as maybe amended front time to time, together with any and all amendments or supplements hereto.

1.22 DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS means the rights as defined by § 38-33.3-103(14) and 38-33.3-103(29) of the Act reserved by the Declarant under ARTICLE TEN hereof.

1.23 ELIGIBLE MORTGAGEE means a holder, insurer or guarantor of a First Security Interest who has delivered a written request to the Association containing its name, address, the legal description, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

1.24 FIRST MORTGAGEE means any Person which owns, holds, insures or is a governmental guarantor of a Security Interest as herein defined, which is a First Security interest encumbering a Unit within the Condominium Community. A First Mortgagee shall also include the holder of executory land sales contracts wherein the Administrator of Veterans Affairs (Veterans Administration) is the Seller, whether such contract is recorded or not.

1.25 FIRST SECURITY INTEREST means a Security Interest (as hereinafter defined) that has priority of record over all other recorded liens except those liens made superior by statute (such as general ad valorem tax liens and special assessments).

1.26 GARAGE ASSESSMENT means those Assessments defined in Paragraph 5.4(e) hereof.

1.27 GUEST means (a) any person who resides with an Owner within the Condominium Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Unit within the Condominium Community, and any members of his or her household, invitee or cohabitant of any such person; (d) a contract purchaser; or (e) an employee, customer or client of an Owner or tenant.



1.28 LIMITED COMMON ELEMENTS means those parts of the Common Elements which are limited to and reserved for the exclusive use of the Owner of a particular Unit as designated on the Map, including areas depicted on the Map as "L.C.E." or, in case of limited common elements appurtenant to Residential Condominium Units, "L.C.E.- R", or, in the case of limited common elements appurtenant to Commercial Condominium Units, "L.C.E. - C".

1.29 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties or functions of the Association.

1.30 MAP means THE CONDOMINIUM MAP OF THE MOUNT VICTORIA LODGE, which, in addition to the requirements set forth in § 38-33.3-209 of the Act, the Map shall also depict the following, to wit:

- (a) The legal description of the surface of the Condominium Community; and
- (b) The linear measurements and location with reference to the exterior boundaries of the Condominium Community, of the Buildings and all improvements built within the Condominium Community; and
- (c) The floor plans and elevation plans of the Buildings within the Condominium Community showing the location, the designation, linear dimensions and identification number of each Condominium Unit, storage spaces, parking spaces and garage spaces, and title designation of all of the Common Elements and Limited Common Elements; and
- (d) The elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plan, and the linear measurements showing the thickness of the exterior or perimeter walls of the Units and of the Building.

The Map, and any supplements thereto, shall contain a certificate by a registered land surveyor certifying that the Map contains (a) all of the information required by § 38-333-200 of the Act, and (b) that the Map was prepared subsequent to substantial completion of the improvements.

In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be the boundaries.

Declarant hereby reserves unto itself the right, from time to time, without the consent of any Owner or First Mortgagee being required to reflect the subdivision or combination of any Commercial Unit in accordance with Paragraphs 2.6 and 2.7 hereof, so long as such amendment is made prior to the expiration of the Declarant's Rights as set forth in Paragraph 10.3 hereof. Declarant hereby reserves unto the Board of Directors of the Association the right, from time to time, without consent of any Owner or First Mortgagee being required to amend the Map to (a) insure that the language and all particulars used on the Map and contained in the Declaration are identical, (b) establish, vacate and relocate utility easements, access easements, and parking spaces, (c) establish certain Common Elements as Limited Common Elements, (d) to reflect the subdivision or combination of any Commercial Unit as provided hereunder, and (e) as may be otherwise permitted by the Act. In all other cases the Map may be amended in accordance with Paragraph 14.2 hereof.

The Map and any supplements thereto is hereby incorporated herein by reference as if set forth in its entirety.

1.31 MEMBER means each Owner, as set forth in Paragraph 1.33 hereof.

1.32 NOTICE AND HEARING means a written notice and an opportunity for a hearing before the Board of Directors in the manner provided in the Bylaws.

1.33 OWNER means the owner of record of the fee simple title to any Unit which is subject to this Declaration, whether one or more persons or entities, including the Declarant, so long as any Unit remains unsold, excluding, however, those having an interest merely as security for the performance of any obligation.

1.34 PERIOD OF DECLARANT CONTROL means that period of time defined in Paragraph 4.7 hereof.

1.35 PERSON means a natural person, a corporation, a partnership, an association, a trustee, a limited liability company, a joint venture, or any other entity recognized as being capable of owning real property under Colorado law.

1.36 PROJECT DOCUMENTS means this Declaration and the Map recorded and titled pursuant to the provisions of the Act, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations, if any, as they maybe amended from time to time. Any exhibit, schedule or certification accompanying a Project Document is a part of that Document.

1.37 PROPERTY means the property more particularly described on Exhibit A attached hereto and incorporated herein by reference.

1.38 RESIDENTIAL UNIT means those Condominium Units as designated on the Map by alphabetical reference, including those designated as "Unit A", "Unit B", "Unit C", "Unit D", "Unit E", "Unit F", "Unit G", "Unit H", "Unit I", and "Unit J", which shall be used and occupied solely for residential purposes.

1.39 RULES means the Rules and Regulations adopted by the Board of Directors not the regulation and management of the Condominium Community as amended from time to time.

1.40 SECURITY INTEREST means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

1.41 SPECIAL ASSESSMENT means those Assessments defined in Paragraph 5.4(d) hereof.

1.42 TURNOVER DATE means the date the Period of Declarant Control terminates as more full set forth in Paragraph 4.7 hereof.

1.43 UNITS THAT MAY BE CREATED means thirteen (13) Units, which shall be the maximum number of Units that may be subject to this Declaration.

## ARTICLE TWO: NATURE AND INCIDENTS OF THE CONDOMINIUM COMMUNITY

2.1 The Condominium Community. The name of the Condominium Community is MOUNT VICTORIA LODGE.

2.2 Initial Number of Units. The initial number of Residential Units is ten (10) and the initial number of Commercial Units is three (3). Declarant reserves the right but not the obligation to create additional Commercial Units in accordance with Sections 2.6 and 2.7 hereof.

2.3 Division into Units, Estates of an Owner. The Condominium Community is hereby divided into thirteen Units, consisting of a separate fee simple estate in a particular Condominium Unit, and an appurtenant undivided fee simple interest in the Common Elements.

The undivided interest in the Common Elements appurtenant to a particular Condominium Unit is determined in accordance with that Units Allocated Interest as set forth in Paragraph 1.2(b) hereof and is as set forth on Exhibit B attached hereto.

2.4 Title. A Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado.

2.5 Description of a Condominium Unit. Every contract for the sale of a Unit written prior to the filing for record of The Map and this Declaration may legally describe a Unit by its identifying Unit number or letter designation followed by the words 'MOUNT VICTORIA LODGE' with further reference to The Map thereof to be titled for record and the Declaration to be recorded. Upon recordation of The Map and the Declaration in the records of the Clerk and Recorder of Summit County, Colorado, such description shall be conclusively presumed to relate to the therein described Units.

Every deed, lease, mortgage, trust deed, will or other instrument may legally describe a Unit by its identifying number followed by the words MOUNT VICTORIA LODGE.

A sufficient description of a Condominium Unit shall be as follows:

UNIT \_\_\_\_\_, MOUNT VICTORIA LODGE according to THE CONDOMINIUM MAP OF THE MOUNT. VICTORIA LODGE, recorded on \_\_\_\_\_, at Reception No., and as defined by THE CONDOMINIUM DECLARATION OF THE MOUNT VICTORIA LODGE, recorded on \_\_\_\_\_, at Reception No. \_\_\_\_\_, in the Office of the County Clerk and Recorder, Summit County, Colorado.

Every description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Condominium Unit, but also the Common Elements and the right to the

use of the Limited Common Elements appurtenant thereto. Each such description shall be construed to include: a nonexclusive easement for appropriate ingress and egress throughout the Condominium Community and for the use of appropriate exclusive use of the Limited Common Elements; and all other easements, obligations, limitations, rights, encumbrances, covenants, conditions and restrictions created in this Declaration.

The reference to The Map and Declaration in any instrument shall be deemed to include any supplements or amendments to The Map or Declaration, without specific references thereto.

The undivided interest in the Common Elements appurtenant to any Unit shall be deemed conveyed or encumbered with that Unit, even though the legal description and the instrument conveying or encumbering said Unit may only refer to the title to than Unit. The reference to the Map and Declaration in any instrument shall be deemed to include any Supplements or Amendments to the Map or Declaration without specific reference thereto.

2.6 Combination of a Commercial Unit. Subject to the regulations of the City, Declarant or the Owner or Owners of one or more Commercial Units, shall have the right to: (a) physically combine the entire space within one Commercial Unit with the entire space within one or more adjoining Commercial Units; or (b) combine a part of or combination of parts of the space of one Commercial Unit with a part of or combination of parts of the space within one or more adjoining Commercial Units. Upon the combination of any Units, the Unit resulting from such combination shall be allocated the undivided interest of the predecessor Unit(s) in and to the Common Elements.

2.7 Resubdivision of a Commercial Unit. Subject to the regulations of the City, Declarant and the Owner or Owners shall have the right to (a) resubdivide the space within a Commercial Unit to its original configuration prior to any combination of Unit space permitted hereunder or (b) resubdivide the space, or a part of the space, within a Commercial Unit to create additional Commercial Units.

Upon the resubdivision of Commercial any Unit in accordance with the terms and conditions contained herein, the Commercial Units resulting from such resubdivision shall be allocated a proportionate interest in and to the Common Elements in accordance with the allocation formula set forth in Paragraph 1.2(b) hereof. Such allocation shall be reflected by an amendment to the Schedule of Interests. The right of the Declarant to resubdivide Commercial Units shall end upon the expiration of the Declarant's Rights as set forth in Paragraph 10.3 hereof.

2.8 Combination/Subdivide Procedure. In order to combine or resubdivide any Commercial Units as provided above, the Owners of such Units, other than Declarant, prior to the expiration of the Declarant's Rights set forth in Paragraph 10.3 hereof, shall submit an application to the Board of Directors, which shall include (a) evidence that the proposed combination or subdivision of a Unit or Units complies with all building codes, fire codes, zoning codes, and other applicable ordinances adopted and enforced by the City; (b) that the proposed combination does not violate the terms of any mortgage encumbering the unit; (c) the proposed reallocations to the Table of Interests; (d) the proposed form for amendments to the Declaration, including the Map, as may be necessary to show the Unit or Units which are created by the combination or resubdivision of a Unit or Units and their dimensions and identifying numbers; (e) the proposed change to the exterior of the Building, if any; (f) a deposit for attorney's fees and costs which the Association may incur in reviewing and effectuating the transaction, in an amount reasonably

estimated by the Board of Directors; and (g) such other information as may be reasonably requested by the Board.

The right of the Declarant to approve the combination of two Units or to physically combine Units shall terminate upon the expiration of Declarant's Rights as set forth in Paragraph 10.3 hereof.

Nothing contained herein shall prevent Declarant from combining Units like any other Owner after the expiration of Declarant's rights as set forth in Paragraph 10.3 hereof.

2.9 Unit Boundaries. The interior unfinished surfaces of the perimeter walls, lowermost floors and uppermost ceilings shall mark the perimeter boundaries of a Unit as shown on the Map, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Units, and all other portions of the walls, floors, or ceilings are part of the Common Elements. Partition walls located within the boundaries of a Unit and which do not contain structural components shall be deemed part of such Unit. In the event a Unit boundary is not constructed, but shown on the Map, such boundary as indicated on the Map shall be deemed to be the centerline of a non-constructed party wall and the Units sharing such boundary shall be deemed to include up to said boundary until such time as the party wall is constructed, whereupon the Unit boundary shall be as defined interior, unfinished surfaces of said wall as set forth in the preceding sentence.

If any chimney, flue, duct, wire, conduit, bearing wall, bearing column, or any fixtures lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, roof-gardens, decks, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Subject to the above, all spaces, interior partitions, and other fixtures and improvements located within the boundaries of a Unit are a part of the Unit.

2.10 Physical Boundaries. The existing physical boundaries of any Unit or Common Elements shall be conclusively presumed to be the boundaries.

2.11 Inseparability of a Unit. An Owner's undivided interest in the Common Elements shall not be separated from the Condominium Unit to which it is appurtenant and shall be deemed to be conveyed or encumbered with the Condominium Unit even though the interest is not expressly mentioned or described in a deed or other instrument.

2.12 No Partition. The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for the physical partition or subdivision of a Residential Unit between or among the Owners thereof, provided, however, an action of partition of a Unit shall be permitted by a sale and the division of time sale proceeds. Physical partition or subdivision of a Commercial Unit as provided for hereunder is permissible.



2.13 Separate Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither The Building, the Condominium Community nor any of the Common Elements shall be deemed to be a parcel. The lien for taxes assessed to any Unit shall be confined to that Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit.

2.14 Limited Common Elements. A portion of the Common Elements reserved for the exclusive use of the individual Unit Owners of the respective Units, and such items and areas are referred to a "Limited Common Elements". The Limited Common Elements so reserved shall be identified on the Map. Such Limited Common Elements are hereby made appurtenant to and shall not be partitioned from the Unit to which they are reserved, and no reference thereto may be nor shall be required to be made in the deed, mortgage, instrument of conveyance, or other instrument describing the Unit. The designation "LCE" or "L.C.E." on the Map shall mean and refer to Limited Common Elements. The designation "L.C.E. - R" on the Map shall mean and refer to Limited Common Elements appurtenant to all Residential Units. The designation "L.C.E. - C" shall mean and refer to Limited Common Elements appurtenant to all Commercial Units.

2.15 Compliance with Provisions of Declaration, Articles and Bylaws of the Associations. Each Owner shall comply strictly with, and shall cause each of his or her Guests to comply strictly with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, rules, regulations and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time.

Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with costs of suit and reasonable attorney's fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

2.16 Liens Against Condominiums Units - Removal From Lien - Effect of Part Payment. Upon the completion of the Condominium Community by the Declarant and payment of all of the costs thereof, then, no lien shall arise or be effective against the Condominium Community.

Liens or encumbrances shall only arise or be created against each Condominium Unit and the percentage of undivided interest in the Common Elements appurtenant to the Condominium

Unit, in the same manner and under the same conditions as liens and encumbrances may arise or be created upon any other parcel or real property subject to individual ownership.

No labor performed or materials furnished, with the consent or at the request of an Owner or his or her agent, shall be the basis for the filing of a lien pursuant to law against the Unit or other property of another Owner not expressly consenting to or requesting the same, except that express comment shall be deemed to be given by the Owner of any Unit to the Board in the case of emergency repairs.

Labor performed or materials furnished for the Common Elements, if duly authorized by the Board of Directors in accordance with the Declaration or Bylaws, shall be deemed to be performed or



furnished with the express consent of each Owner, and shall be the basis for the filing of a lien pursuant to law against each of the Units within the Condominium Community.

In the event a lien is effected against two or more Units, the Owners of each of the separate Units may remove their Condominium Unit and the percentage of undivided interests in the Common Elements appurtenant to said Condominium Unit from the lien by payment of the fractional or proportional amount attributable to each of the Units affected.

Individual payment shall be computed by reference to the percentages appearing in this Declaration. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent time lienor from proceeding to enforce his or her rights against any Unit not so released or discharged.

Each Owner shall indemnify and hold each of the other Owners harmless from and against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in the course of work performed on such Owner's Unit. '

At the written request of any Owner, the Board shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien and all costs incidental thereto, including reasonable attorneys' fees by an Individual Assessment against such Owner in accordance with Paragraph 5.7 hereof.

2.17 Garage Spaces and Storage Spaces. All interior Garage Spaces and designated storage spaces in the Garage shall be a part of the Limited Common Elements. Each Garage Space and each storage space shall be limited to and reserved for the exclusive use of the owners of a particular Residential Unit as initially designated by the Declarant on the Map and upon such designation said Garage Space and storage space will be appurtenant to that Unit. Each Owner shall maintain the interior of his or her Garage Space and storage space in a clean, safe and attractive condition and shall keep the same free from litter and debris. The Board of Directors shall have the authority to establish reasonable rules and regulations regarding the sightliness and cleanliness of the Garage Spaces and storage spaces and the use thereof by its Owner.

No gasoline, gasohol, distillate, diesel, kerosene, naphtha or similar volatile combustible or explosive materials shall be stored in any Garage Space or storage space except in the fuel tanks of vehicles parked therein and used for transportation purposes.

It is the intent of the Declarant in designing the overall parking plan for the Condominium Community that Garage Spaces be used in such a manner so that vehicles could be parked within such spaces. Therefore, any use of a Garage Space that does not allow a vehicle to be parked within such space is expressly prohibited. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 54(b) hereof.

2.18 Leasing of a Garage Space. The exclusive right to use a Garage Space may be leased by an Owner to any person or entity, provided, however, that the Owner shall not be entitled to lease such Garage Space to any person or entity other than a Unit Owner or a tenant thereof.

2.19 Parking Spaces. All outdoor Parking Spaces contained within the Condominium Community shall be a part of the Common Elements; provided, however, that the Board shall maintain control thereof

and shall have the right to assign and reassign Parking Spaces to Owners within the Condominium Community. The outdoor Parking Spaces are not appurtenant to a Unit.

2.20 Parking Space Cooperation. Except with respect to those outdoor spaces identified as Limited Common Element on the Map, all Owners acknowledge and understand that all of the outdoor Parking Spaces are part of the Common Elements, are not appurtenant to a particular Unit, and shall be used in accordance with this Declaration and any Rules and Regulations of the Association.

All Owners acknowledge and understand that the Condominium Community is a commercial and residential community (mixed use) and both Residential and Commercial Owners and their respective Guests, clients and customers will make use of the outdoor Parking Spaces. All parties agree that they will cooperate to the fullest extent possible to achieve the most satisfactory use of the outdoor Parking Spaces.

2.21 Restrictions on Sale of a Condominium Unit. The right of an Owner to sell, transfer or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction and such Unit may be sold free of any such restrictions.

2.22 Restrictions on Mortgaging Units. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Unit. There is no requirements for the use of a specific lending institution or particular type lender.

### ARTICLE THREE: VARIOUS RIGHTS AND EASEMENTS

3.1 Owner's Rights in the Common Elements. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Elements, to include the Limited Common Elements, which shall be appurtenant to and shall pass with the title of the Unit to such Owner, subject to time Development Rights and Special Declarant Rights of the Declarant reserved herein and the following rights of the Board of Directors:

(a) To borrow money to improve the Common Elements and to mortgage said Common Elements as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a security interest unless such is approved by Owners to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

(b) To convey or dedicate all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners entitled to cast at least eighty percent of the votes in the Association, including eighty percent of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-311 of the Act. The granting of permits, licenses and easements shall not be deemed a conveyance or encumbrance within the meaning of this Paragraph as more fully set forth in § 38-33.3-312 of the Act.

(c) To promulgate and adopt Rules and Regulations with which each Owner and their Guests shall strictly comply.

(d) To take such steps as are reasonably necessary to protect the Common Elements against foreclosure.

(e) To enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of Common Elements by Owners and Guests for any purpose the Board may deem to be useful, beneficial or otherwise appropriate.

(f) To close or limit the use of the Common Elements temporarily while maintaining, repairing and making replacements in the Common Elements, or permanently if approved by Members to which at least eighty percent of the votes in the Association are allocated, including eighty percent of the votes allocated to Units not owned by the Declarant as more fully set forth in § 38-33.3-312 of the Act.

(g) To make such use of the Common Elements as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration.

(h) The rights granted to the Board of Directors in Paragraph 4.13 hereof.

3.2 Owner's Rights in Limited Common Elements. Each Owner and his or her Guests shall have an exclusive right to use and enjoy the Limited Common Elements designated herein or on The Map as appurtenant to the Unit owned by such Owner.

3.3 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Elements and facilities to their Guests.

3.4 Owner's Easement for Access, Support and Utilities. Each Owner shall have a non-exclusive easement for access between his or her Condominium Unit and the roads and streets within and adjacent to the Condominium Community. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owners Unit. Each Owner shall have a non-exclusive easement in and over the Common Elements within the Condominium Community including the Common Elements within the Condominium Unit of another Owner, for horizontal and lateral support of the Condominium Unit which is part of his or her Unit, and for utility service to the Condominium Unit, including water, sewer, gas, electricity, telephone and television service.

3.5 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Condominium Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Condominium Unit, the Owner of that Condominium Unit shall and does have an easement for such encroachment and for the maintenance of same. The easement shall extend for whatever period the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Condominium Unit. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of the Buildings, by error in The Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Condominium Community or any part thereof or by any other movement of any portion of the improvements located upon the Condominium Community.

3.6 Easements in Condominium Units for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Condominium Unit. All Owners shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, whether the Owner is present or not, for access through each Condominium Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Condominium Unit.

For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one days' notice in writing to the Owner. In case of emergency, entry shall be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry.

The Board of Directors or its agents is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. The Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements because of such forcible entry.

All damage to the interior or any part of a Condominium Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as part of the Common Expense Assessment by all of the Owners. No diminution or abatement for Common Expense Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of such repairing such damage. In the event the Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board of Directors may pay for said damages and charge the Owner responsible as an Individual Assessment in accordance with Paragraph 5.6 hereof.

3.7 Emergency Easements. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Condominium Community, to enter upon all driveways, parking areas and garage areas located in the Condominium Community, in the performance of their duties.

3.8 Utility Easements. The Board of Directors has the right to grant permits, licenses amid easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium Community.

3.9 Recording Data Regarding Easements. The recording data for recorded easements and licenses appurtenant thereto, or included in the Condominium Community or to which any portion of the Condominium Community is or may become subject to are identified on Exhibit C attached hereto, or, in the event no Exhibit C is attached, are shown on the Map.

3.10 Owner's Easement for Access. Each Owner shall have a non-exclusive easement for access between his or her Unit and the streets within the Condominium Community. There shall be no restrictions upon any Owner's right of ingress and egress to or from such Owner's Unit. Such easement shall extend for whatever period of time the need for access shall exist.

3.11 Easements Deemed Appurtenant. The easements, uses and rights herein created for an Owner shall be perpetual and appurtenant to the Units owned by such Owner. All conveyances or any other instruments affecting title to a Unit shall be deemed to grant and reserve the easements, uses and rights as provided for herein, as though set forth in said document in full, even though no specific reference to such easements, uses or rights appear in such conveyance.

#### ARTICLE FOUR: THE ASSOCIATION

4.1 Name. The name of the Association is THE MOUNT VICTORIA LODGE ASSOCIATION.

4.2 Purposes and Powers. The Association, through its Board of Directors, shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Elements and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners and the residents of the Condominium Community. Any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes. The Board of Directors shall have all of the powers, authority and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Association.

4.3 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.4 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

4.5 Classes of Membership and Voting. The Association shall have three classes of membership as follows: General, Residential and Commercial. Every Owner of a Unit shall enjoy General Membership.

Residential Memberships shall be limited to Owners of Residential Units. Commercial Memberships shall be limited to Owners of Commercial Units.

The vote of the general membership shall be required for the determination of General Matters; and the number of votes represented by each General Membership shall be that Owners undivided percentage ownership interest in the Common Elements allocated to each Unit in accordance with Paragraph 1.2(a) hereof and as set forth on the Table of Interests on the attached Exhibit B.

Residential Matters shall be determined by the vote of the Residential Membership, the number of votes represented by each Residential Membership shall be determined on the basis of the proportion



which the approximate square footage finished area of each Residential Unit bears to the total approximate square footage finished area of all Residential Units then in the Condominium Community and is as set forth on Exhibit B attached hereto.

Commercial Matters shall be determined by the vote of the Commercial Membership, the number of votes represented by each Commercial Membership shall be determined on the basis of the proportion which the approximate square footage finished area of each Commercial Unit bears to the total approximate square footage finished area of all Commercial Units then in the Condominium Community and is as set forth on Exhibit B attached hereto.

A presumption shall exist in favor of generality of issues, and each matter shall be presumed a General Matter unless determined by the Board of Directors to be a Residential Matter or a Commercial Matter by an inference which is clear and objective. The categorization of an issue as a Residential Matter, Commercial Matter or General Matter shall be made by the Board of Directors.

The vote for such Unit, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an Interest of the Unit is made prior to the completion of the vote, in which case the vote for such Unit shall be exercised, as the persons holding such interest shall determine between themselves. Should the joint owners of a Unit be unable, within a reasonable time, to agree upon how they will vote any issue, they shall be passed over and their right to vote on such issue shall be lost.

4.6 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Managing Agent of the Association as more fully provided for in the Bylaws, provide no such delegation shall relieve the Board of final responsibility.

The Board of Directors shall consist of three persons. The Board of Directors shall consist of two classes of Directors, Residential Directors and Commercial Directors. The elected Residential Directors shall be elected solely by the Residential Owners and the elected Commercial Director shall be elected solely by the Commercial Owners. The Board of Directors shall consist of two Residential Directors and one Commercial Director.

The Residential Directors shall have the sole and exclusive authority of all Residential Matters. The Commercial Directors shall have the sole and exclusive authority on all Commercial Matters. All members of the Board of Directors shall vote on any General Matters. The Board of Directors and the officers of the Association shall have the duty to represent the interests of both the Commercial Unit Owners and the Residential Unit Owners in a fair and just manner on all matters that may affect both or either Commercial Unit Owners and Residential Unit Owners.

4.7 Period of Declarant Control. Subject to Paragraph 4.8 below, there is a "Period of Declarant Control" during which the Declarant may appoint and remove any officer of the Association or member of the Board of Directors. The Period of Declarant Control is a length of time expiring seven years after the recording of this Declaration; provided, however, the Period of Declarant Control in any event terminates no later than either (a) sixty days after conveyance of seventy-five percent of the Units That May be Created to owners other than the Declarant, (b) two years after the last conveyance at a Unit by the Declarant in the ordinary course of business, or (c) two years after any right to add new Units to the Condominium Community was last exercised.



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

**4.8 Election by Owners.** Not later than sixty days after conveyance of twenty-five percent of the Units That May Be Created to Owners other than the Declarant, at least one member and not less than twenty-five percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than sixty days after conveyance of fifty percent of the Units That May Be Created to Owners other than the Declarant, not less than thirty-three and one third percent of the members of the Board of Directors must be elected by Owners other than the Declarant.

Not later than the termination of the Period of Declarant Control as set forth in Paragraph 4.7 hereof, the Owners shall elect a Board of Directors consisting of at least three members, at least a majority of whom shall be Owners other than the Declarant. The Board shall elect the officers. The Owners elected to the Board shall take office upon election.

**4.9 Delivery of Documents by Declarant.** Within sixty days after the Owners other than the Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver without expense to the Board all property to the Owners and to the Association held by or controlled by the Declarant, including, without limitation, the following items:

(a) The original or a certified copy of the recorded Declaration, as amended, the Association's Article of Incorporation, together with a Certificate of Good Standing, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

(b) An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends in accordance with § 38-33.3-303(9)(b) of the Act;

(c) The Association funds or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be the property of the Association and has been used exclusively in the operation and enjoyment of the Common Elements, a copy of any plans and specifications used in the construction of improvements in the Condominium Community, and inventories of these properties;

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

(f) Any other permits issued by governmental bodies applicable to the Condominium Community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(i) Employment contracts in which the Association is a contracting party; and

(j) Any service contract at which the Association is a contracting party or in which the Association of the Owners have any obligation to pay a fee to the persons performing the services.

4.10 Budget. The Board of Directors shall cause to be prepared, at least sixty days prior to the commencement of each calendar year, a Budget for such calendar year. Within thirty days after the adoption of any Budget by the Board, the Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than fourteen days nor more than sixty days after mailing or other delivery of the summary.

Unless at that meeting Owners of Units to which at least sixty-seven percent of the votes in the Association are allocated reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event that the Budget is rejected, the budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget by the Board of Directors.

4.11 Association Agreements. Any agreement for professional management of the Condominium Community or any contract providing for services of the Declarant, may not exceed one year; provided, however, that such agreement(s) may include provisions whereby, in the absence of a termination, the agreement shall automatically renew an additional term. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice,

The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Period of Declarant Control unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such transfer from Declarant Control upon not more than thirty days notice to the other party thereto.

4.12 Indemnification. Each Officer, Director and committee member of the Association shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon him or her in any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of him or her being or having been an Officer, Director or committee member of the Association, or any settlements thereof, whether or not he or she is an Officer, Director or committee member of the Association at the time such expenses are incurred, to the full extent permitted by Colorado law.

4.13 Certain Rights and Obligations of the Association.

(a) Attorney in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an Attorney-in-Fact to deal with the Condominium Community upon its damage, destruction, condemnation and obsolescence.

The Board of Directors is hereby irrevocably appointed attorney-in-fact for the Owners, and each of them, to manage, control and deal with the interest of such Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, to deal with the Condominium Community upon its destruction, condemnation or obsolescence as hereinafter provided. The acceptance by any person of any interest in any Unit shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above and hereinafter. The Board of Directors shall be granted all of the powers necessary to govern, manage, maintain, repair, administer and regulate the Condominium Community and to perform all of the duties required of it.

(b) Contracts, Easements and Other Agreements: The Board of Directors shall have the right to enter into, grant, perform, enforce, cancel and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of way, for the use by Owners, their Guests, and other persons, concerning the Common Elements. Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or binder therein, by the Owners or First Mortgagees.

(c) Other Association Functions. The Association may undertake any activity, function, or service for the benefit of or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Common Expense Assessment basis.

(d) Implied Rights. The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which way he necessary or desirable to fulfill its duties, obligations, rights or privileges.

4.13 Certain Rights and Obligations of the Declarant. So long as there are unsold Units within the Condominium Community owned by the Declarant, the Declarant shall enjoy the same rights and assumes the same duties as they relate to each individual unsold Unit.

#### ARTICLE FIVE: ASSESSMENTS

5.1 Obligation. Each Owner, including Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association (a) Common Expense Assessments, (b) Special Assessments, Fines, (c) Garage Assessments if applicable, (d) Fines, (e) Individual Assessments, and (f) Costs of Enforcement, which shall be a continuing lien upon the Unit against which each such Assessment is levied.

The obligation for such payments by each Owner to the Association is an independent personal covenant with all amounts due, from time to time, payable in full when due without notice or demand and without setoff or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all Assessments and Costs of Enforcement attributable to their Unit.

The personal obligation for delinquent assessment shall not pass to such Owners successors in title unless expressly assumed by them.

No Owner may waive or otherwise escape liability for the Common Expense Assessment provided for herein by the non-use of the Common Elements or the abandonment of his or her Unit.

The omission or failure of the Board of Directors to levy the Common Expense Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

5.2 Purpose of the Assessments. The Common Expense Assessment shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Condominium Community and the Members of the Association. Such purposes shall include but not be limited to the improvement, repair, maintenance, reconstruction and insuring of the Common Elements, common utility service, and any other purpose reasonable, necessary or incidental to such purposes.

Such Assessment shall include the establishment and maintenance of a reserve Fund for the improvement, maintenance, reconstruction, and repair of the Common Elements on a periodic basis, provided, however, that such assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

5.3 Date of Commencement of the Common Expense Assessment. The Common Expense Assessment shall commence as to all Units no later than sixty days after the first Unit is conveyed to an Owner other than the Declarant.

Until the commencement of the collection of the Common Expense Assessments, the Declarant shall pay all of the expenses incurred and paid for by the Association; provided, however, that Declarant shall only be responsible for its pro-rata share of long term expenses for the period between the date the expenses is incurred and the date of conveyance of each Unit (e.g. insurance premiums).

5.4 Levy of Assessments.

(a) Common Expense Assessments. Common Expense Assessments shall be levied on all Units based upon a budget of the Associations requirements. The Common Expense Assessment liability shall be allocated among the Units in accordance with that Units Common Expense Assessment Liability as set forth in Paragraph 1.2(b) hereof, and shall commence in accordance with Paragraph 5.3 hereof.

To the extent that any Common Expenses or a portion thereof benefit fewer than all of the Unit Owners, such expenses may be assessed exclusively against the Units benefitted as provided in CR5. § 38-33.3-315(3)(h) of the Act.

(b) Individual Assessments. The Board of Directors shall have the right to individually levy any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 2.17, 5.7, 6.9, 6.13, 7.2, 7.7, 8.3, and 9 1 thereof. No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association, Individual Assessments shall be collected as part of the Cost of Enforcement. Individual Assessments may be levied at any time as required and are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

(c) Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners in accordance with Paragraphs 2.15 and 6.3 hereof and for the violation of any of the Rules and Regulations of the Association. No such Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association. Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied. Fines shall be collected as part of the Costs of Enforcement. Fines may be levied at any time as required and are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

(d) Special Assessments. In addition to the other Assessments authorized herein, the Board of Directors, subject to the limitations set forth below, may levy a Special Assessment for the purpose of defraying, in whole or in part, an unexpected expense to include but not be limited to, the cost of any construction, reconstruction, improvement, repair or replacement or capital improvement upon the Common Elements, including fixtures and personal property relating thereto, or for the funding of any operating deficit incurred by the Association provided that any such assessment shall have the approval of Owners to whom at least sixty-seven percent of time votes in the Association are allocated, who are voting in person or by proxy at a meeting duly called for this purpose.

Any such Special Assessment shall be levied against each Unit in accordance with that Unit's Common Expense Assessment Liability determined in accordance with Paragraph 1.2(b) hereof. Notwithstanding the foregoing, Special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

If the Condominium Community has been or may be approved by the Federal Housing Administration and/or Veterans Administration, then until the termination of the Period of Declarant Control in accordance with Paragraph 4.7 hereof, all Special Assessments not capital improvements in addition to the approval of the Owners as required above will require the written consent of the Veterans Administration and/or the Federal Housing Administration.

(e) Garage Assessments. A Garage Assessment shall be levied against each Residential Condominium Unit to which a Garage Space is appurtenant as a Limited Common Element as provided in Paragraph 2.17. The Garage Assessment shall be in an amount determined from time to time by the Board of Directors as reasonable and necessary to provide for the repair, maintenance and reconstruction of the underground parking area and the elevator which provides access from the underground parking area to the Residential Units, including, without limitation any separately metered utility expenses associated with such area and elevator, and the cost of cleaning and upkeep of the garage area, and, as provided in Paragraph 9.1.

5.5 Due Date. Fines and individual Assessments shall be due and payable as established by the Board of Directors.

Common Expense Assessments shall be levied on an annual basis and shall be due and payable in monthly installments in advance, provided that the first Assessment levied shall be adjusted to reflect the time remaining in the first Association's fiscal year. Any Owner purchasing a Unit between annual due dates shall pay a prorated share.

Special Assessments shall be due and payable as established by the Board but may be payable on an installment basis as determined by the Board.





and whether such contract is recorded or not, except to the extent the Act grants priority for Assessments to the Association.

The Act does not affect the priority of mechanic's or materialmen's liens.

Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments under this Article is required. However, the Board of Directors may prepare, and record in the Office of the County Clerk and Recorder, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. If a lien is filed, the cost thereof shall be considered a Cost of Enforcement.

Sale or transfer of any Unit shall not affect the lien for said Assessments except that sale or transfer of any Unit pursuant to foreclosure of any first deed of trust or mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall only extinguish the Assessment Lien only to the extent provided by Colorado law. No such sale or deed in lieu of foreclosure shall relieve any Owner from continuing personal liability for any Assessment thereafter becoming due, nor from the lien thereof.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against that Unit which have accrued prior to the time such First Mortgagee acquires title to the Unit, except to the extent the Act grants lien priority for Assessments of the Association.

In any action by the Association to collect Assessments and Costs of Enforcement or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments and Costs of Enforcement. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust or mortgage.

The Assessment Lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Unit; provided, however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Unit under any assignment of rents given in connection with a first deed of trust or mortgage. Without prejudice to any other right or remedy, the Association may exercise its lien rights to rents and profits by delivering a Notice of Exercise to the occupant or any payor of rents and profits, and thereafter shall be entitled to collect all such rents and profits to the extent of any delinquency.

The Association's lien on a Unit for Assessments and Costs of Enforcement shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States.. The acceptance or a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

5.8 Assignment of Assessments. The Board of Directors shall have the unrestricted right to assign its right to receive Common Expense Assessments, Garage Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is

approved in writing by Owners to which at least sixty-seven percent of the votes in the Association are allocated, including sixty-seven percent of the votes allocated to Units not owned by the Declarant.

5.9 Surplus Funds. Any surplus funds of the Association remaining at the close of the Association's fiscal year after payment of the Common Expenses and funding the Reserve Fund shall be retained by the Association as unallocated reserves and need not be credited to the Owners to reduce their future Common Expense Assessment liability.

5.10 Working Capital Fund. At the closing of the initial sale, and each subsequent resale, of a Unit to an Owner other than the Declarant, a non-refundable contribution shall be made by such Owner or subsequent Owner to the Working Capital Fund of the Association in an amount equal to two months' Common Expense Assessment then in effect. Said contribution shall be collected and transferred to the Association at the time of closing of the sale of each Unit and shall be held by the Association for the use and benefit of the Association including meeting unforeseen expenditures or to purchase additional equipment or services.

Such contribution to the Working Capital Fund shall not relieve an Owner from making regular payments of Assessments as the same become due. Upon the later sale or transfer of his or her Unit, an Owner shall NOT BE ENTITLED to a credit from the Association for the aforesaid contribution.

The Declarant is prohibited from using the Working Capital Fund to defray any of its expenses, reserve contributions or construction costs, or to make up any budget deficits during the Declarant Control Period.

5.11 Certificate of Assessment Status. The Association shall furnish to an Owner or such Owners First Mortgagee upon written request by certified mail, first class postage prepaid, return receipt requested to the Associations Registered Agent, a statement setting forth the amount of unpaid Assessments currently levied against such Owners Unit.

The statement shall be furnished within fourteen business days after receipt of the request and is binding upon the Association, the Board of Directors, and every Owner. If no statement is furnished to the Owner or First Mortgagee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Unit for unpaid Assessments which were due as of the date of the request.

5.12 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. The Declarant is exempt from the requirements of this Paragraph 5.12.

## ARTICLE SIX. RESTRICTIVE COVENANTS AND OBLIGATIONS

### 6.1 Use and Occupancy.

(a) Residential Units. Each Owner of a Residential Unit shall be entitled to the exclusive ownership and possession of his or her Residential Unit. Subject to the Declarant Rights reserved by the Declarant in ARTICLE TEN hereof, no Residential Unit within the Condominium Community shall be used for any purpose other than single-family residential purposes as generally defined or for a home occupation so long as such occupation is (i) allowed by the local zoning Codes, (ii) employs no outside

employees, and (iii) requires no signage or parking, provided, however, that uses described as "day care" or "child care" facilities (licensed or unlicensed) are expressly prohibited unless approved by the Board of Directors.

(b) Commercial Units. Commercial Units may be used and occupied for any legal commercial activities, except they may not be used for any amusement or entertainment facilities whether live or recorded, including without limitation, video arcades, sports clubs, bars, nightclubs, dance halls, strip joints, etc.

6.2 Use of Common Elements. Each Owner and his other Guests may use the appurtenant Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board of Directors may adopt Rules and Regulations governing the use of the Common Elements, but such Rules and Regulations shall be uniform and nondiscriminatory. Each Owner, by the acceptance of his or her deed or other instrument of conveyance or assignment and such Owner's Guests occupying the Unit agree to be Bound by any such adopted Rules and Regulations.

There shall be no obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements without the prior written consent of the Board of Directors. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board of Directors.

6.3 No Unlawful Use. No unlawful, immoral, offensive or improper use shall be permitted or made within the Condominium Community or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

6.4 Signs and Flags. No signs or advertising of any nature shall be erected or maintained on any part of the Condominium Community without prior Written consent of the Board of Directors. The Board shall permit the placing of (a) at least one sign of reasonable size and dignified form to identify the Condominium Community and the Units therein, and (b) one sign of dignified form inside an Owners Unit for purposes of advertising the Unit being for rent, sale or lease. Owners of Commercial Units may, with the prior written consent of the Board of Directors, place signs on or within or without their Units which relate to the marketing of business activities currently being conducted by such Owner including, but not limited to, signs or advertisements used for the purpose of store identification, and sales of goods. The foregoing notwithstanding, a Unit Owner is allowed to display one political sign per political office or ballot issue with the maximum dimensions of such sign limited to the lesser of: (a) thirty-six (36) by forty-eight (48) inches, or (b) the maximum size allowed by any applicable local ordinance; provided, however, that such signs shall not be displayed earlier than forty-five (45) days before an election and later than seven (7) days after an election day. A Unit Owner may display an American flag on the Unit Owner's property, in the window of the Owner's residence, or on a balcony adjoining the Unit Owner's property, only if the American flag is displayed in a manner consistent with the applicable sections of the federal flag code.

6.5 Exterior Equipment Prohibition. No exterior equipment or fixtures, including, but not limited to, the following shall be permitted without the written consent of the Board of Directors: air conditioning

units, swamp coolers, or other ventilating equipment, and any type or kind of wiring, ducts, or pipes, excluding holiday wiring.

6.6 Antennas and Satellite Dishes. No conventional television antennae of any kind may be installed on the exterior of any Condominium Unit in the Condominium Community. No satellite dishes, antennas, and similar devices for the transmission or reception of television, radio, satellite, or other signals of any kind shall be permitted, except that (a) satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device for a Condominium Unit is placed in the least conspicuous location on the Unit at which an acceptable quality signal can be received and is not visible from the Street, Common Element, or neighboring Condominium Units, or is screened from the view from adjacent Condominium Units in a manner approved by the Board of Directors sitting as the Design Review Committee in accordance with Paragraph 9.5 hereof.

This paragraph is intended to comply with the Telecommunications Act of 1996 ("Act") and the rules and regulations promulgated by the Federal Communications Commission ("FCC"). Specifically, this paragraph is not intended to unreasonably delay or prevent installation, maintenance or use of Permitted Devices; unreasonably increase the cost of installation, maintenance or use of Permitted Devices; or preclude reception of an acceptable quality signal. In the event that any portion of this paragraph is found to violate the Act or any rule or regulation of the FCC the portion of this paragraph that is found to be in violation shall be stricken and the remaining provisions of this paragraph shall remain in full force and effect.

6.7 Pets Within the Condominium Community. Pets are allowed including small dogs, cats (two in the aggregate number) or other customary household pets may be allowed in Condominium Units occupied by Owners not renters) so long as they are not raised, bred or maintained for any commercial purpose, and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents at the Condominium Community. Qualified service animals are permitted for renters with disabilities.

The Board of Directors shall have the right and authority to determine in its sole discretion that the household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from the Condominium Community.

Household pets shall not be allowed to run at large within the Condominium Community, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Elements. Dogs shall be on a leash while on the Common Elements.

Household pets shall not be left alone on any deck or balcony at any time. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.4(c) hereof.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from the Condominium Community or

incurred by the Association in cleanup after such pets may be levied against such pet's Owner as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

6.3 Nuisances. No noxious or offensive activity shall be carried on within the Condominium Community, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

6.9 Vehicular Parking Storage and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than one ton, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within the Condominium Community so they are visible from neighboring Units, the street or Common Elements for a period of more than three days except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles". No emergency or temporary parking or storage shall continue for more than seventy-two hours.

Automobile and/or truck parking will be subject to regulations and restrictions by the Board of Directors. Parking is not allowed on landscaped or lawn areas.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within the Condominium Community except in emergencies. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one week or longer, or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. The Board of Directors shall have the right to remove and store a vehicle in violation of this Paragraph, the expenses of which shall be levied against the Owner of the vehicle by an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

Vehicle maintenance shall be allowed within the Condominium Community only within a Residential Owner's Garage Space; provided, however, all waste oil and other such products shall be properly disposed.

6.10 No unsightliness. No activity shall be conducted on any part of the Condominium Community which is or might be unsafe, unsightly, unhealthy or hazardous to any person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Elements, including areas which are limited Common Elements; and nothing shall be placed on or in windows or doors of Condominium Units, which would or might create unsightly appearance.

Decks, porches and balconies shall not be used for storage. No activity shall be conducted on any part of the Condominium Community which is or might be unsafe or hazardous to any person. All rubbish, trash or garbage shall be regularly removed from the Condominium Community and shall not be allowed to accumulate thereon.



6.11 Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Condominium Community or increase the rate of the insurance on the Condominium Community over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors.

Nothing shall be done or kept in any Unit or in the Common Elements which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound or vibration shall be emitted on any part of the Condominium Community which is unreasonably loud or annoying.

6.14 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to the Common Elements or another Unit, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees and costs, if necessary, may be collected by the Board of Directors from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.4(b) hereof.

6.15 Lease of a Condominium Unit. With the exception of a First Mortgagee who has acquired title to a Unit by virtue of foreclosing a first deed of trust or mortgage or by virtue of a deed in lieu of foreclosure, an Owner shall have the right to lease his or her Condominium Unit upon such terms and conditions as the Owner may deem advisable, subject to the following:

(a) any such lease or rental agreement must be in compliance with applicable local, state and federal laws;

(b) any lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Articles of Incorporation and Bylaws of the Association, and the Rules and Regulations of the Association;

(c) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration, Articles of Incorporation, Bylaws of the Association and the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them to include, but not be limited to, eviction of the lessee from the Unit; and

(d) the Board of Directors shall be furnished with a copy of the lease or rental agreement upon its request.

6.16 Waiver of Summary Abatement. The Declarant and the Association waives the right to use summary abatement or similar means to enforce the restrictions herein contained. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

6.17 Window Coverings. Window coverings shall be blinds or verticals in colors of white or almond made of vinyl, aluminum, fabric or painted wood. A white or almond drapery or drapery liner that does



not permit color to show through can also be installed. All other interior window coverings visible from the exterior of the Condominium Unit must have the prior written approval of the Board of Directors.

6.18 Exemptions for the Declarant. For so long as the Declarant own a Unit within the Condominium Community, the Declarant shall be exempt from the provisions of this ARTICLE SIX to the extent that it impedes the Declarant's development, construction, marketing, sales or leasing activities.

The Association, acting through its Board of Directors, shall have the standing and power to enforce all of the above Restrictive Covenants and Obligations.

#### ARTICLE SEVEN: INSURANCE/CONDEMNATION

7.1 Authority to Purchase/General Requirements. All insurance policies relating to the Common Elements and Limited Common Elements shall be purchased by the Board of Directors. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, renewals of, or termination of insurance coverages obtained on behalf of the Association.

EACH OWNER OF AN OWNER-OCCUPIED CONDOMINIUM UNIT SHALL PURCHASE A CONDOMINIUM UNIT OWNER'S POLICY (HO-6) OR ITS EQUIVALENT FOR ALL OF SUCH OWNER'S PERSONAL PROPERTY AND HOUSEHOLD GOODS LOCATED WITHIN SUCH OWNER'S UNIT. THE POLICY SHALL ALSO INSURE ANY AND ALL IMPROVEMENTS OR BETTERMENTS MADE TO THE UNITS INTERIOR UNFINISHED SURFACES OF ITS PERIMETER WALLS, FLOORS AND CEILINGS BY CURRENT OWNER, TOGETHER WITH PROVIDING PERSONAL LIABILITY COVERAGE. EACH OWNER, EXCEPT FOR DECLARANT, OF A NON-OWNER-OCCUPIED CONDOMINIUM UNIT, SHALL PURCHASE A CONDOMINIUM OWNER'S RENTAL LIABILITY POLICY OR ITS EQUIVALENT.

THE ASSOCIATION WILL NOT PROVIDE SUCH COVERAGES IN ITS MASTER POLICES.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner or First Mortgagee; or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees from collecting insurance proceeds.

Each such policy shall provide that:

(a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households;

(b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board cure the defect and such defect is not cured within forty-five days after such demand;

(c) Such policy, including any fidelity insurance of the Association referred to in Paragraph 7.5 hereof may not be canceled, substantially modified or not renewed (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the Board of Directors and each Owner and First Mortgagee to whom a certificate of insurance has been issued, at their last known address;

(d) Such policy must provide that no assessment may be made against a First Mortgagee and that any assessment made against others shall not become a lien on a Unit superior to the lien of a First Mortgagee except as provided for in the Act;

(e) The Declarant, so long as Declarant shall own any Unit, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written by reputable companies duly authorized and licensed to do business in the State of Colorado with an A.M. Best's rating of "A" or better.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it, appropriately names the First Mortgagee in the policy its beneficiary.

7.2 Condominium Insurance. The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of condominium insurance with sprinkler leakage (if applicable) and debris removal, insuring all the Common Elements and Limited Common Elements located within the Condominium Community.

Such insurance shall also include, among other things, all fixtures, installations or additions comprising a part of the individual Units within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the Units initially installed or replacements thereof made in accordance with the original plans and specifications, or any additions or improvements made by previous Owners.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of the Common Elements, Limited Common Elements and the attached fixtures, installations and additions comprising a part of the Condominium Units. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. If available, the policy shall be endorsed with a 'Guaranteed Replacement Cost Endorsement'.

The Board of Directors shall review at least annually all of its insurance policies in order to insure that the coverages contained in the policies are sufficient. The Board of Directors shall consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, showing that the insurance represents one hundred percent of the current replacement cost as defined above.

Such policies shall also provide:

(a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, increased Cost of Construction Endorsement, Agreed Amount Endorsement, and inflation Guard Endorsement, if available.

(b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners policies shall be deemed excess coverage, and in no event shall the insurance coverage, obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A certificate, together with proof of payment of premiums, shall be delivered by the insurer to any Owner or First Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis.

The Association shall hold any insurance proceeds received in trust for the Association, the Owners and for the holders of their Security Interests as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements in accordance with ARTICLE EIGHT hereof. Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Elements have been repaired and fully restored or the Condominium Community is terminated. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the insurance proceeds.

Title to each Unit within the Condominium Community is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners constitute and appoint the Board of Directors their true and lawful attorney in their name, place and stead for the purpose of dealing with the Condominium Community upon its damage or destruction as is hereinafter provided.

As attorney in-fact, the Board of Directors of the Association shall have full and complete authorization, power and right to make, execute and deliver any contract or any other instrument with respect to the interest of any Owner which is necessary and appropriate to exercise the powers herein granted.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Five Thousand Dollars or one percent of the face amount of the

policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

The Board shall have the authority to levy, after Notice and Hearing, against Owners causing such loss for the reimbursement of all deductibles paid by the Association as an Individual Assessment in accordance with Paragraph 5.4(b) hereof.

7.3 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability including (to the extent they are reasonably available) eviction, libel, slander, false arrest and invasion of privacy and property damage insurance providing coverage for any occurrences happening on the Common Elements and Limited Common Elements.

Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and deaths of persons that result from the operation, maintenance or use of the Common Elements and Limited Common Elements and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to the Common Elements and Limited Common Elements similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Comprehensive Automobile Liability Insurance, and Severability of Interest Endorsement,

IN THE EVENT THE ASSOCIATION HOSTS A FUNCTION AND CHARGES FOR FOOD OR DRINK AND LIQUOR IS SERVED, THERE WILL BE NO HOST LIQUOR LIABILITY COVERAGE FOR THE ASSOCIATION. IF MONEY IS CHARGED, A LIQUOR LIABILITY POLICY WOULD BE NEEDED TO GIVE COVERAGE TO THE ASSOCIATION.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

7.4 Owner Responsibility. Notwithstanding the above, any event which arises from any fixtures or equipment for which the Owner has sole maintenance responsibility which causes damage to the Owner's Unit, another Unit, or to the Common Elements, shall be the sole responsibility of the Owner.

7.5 Fidelity Insurance. The Board of Directors shall obtain and maintain, to the extent reasonably available, fidelity insurance coverage for any Owner or Association employee who either handles or is responsible for funds held or administered by the Association. The insurance shall name the Association as insured, and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

The fidelity insurance policy should cover the maximum funds (including Reserve Funds) that will be in the custody of the Association or its management agent at any time while the policy is in force; provided however, in any event the aggregate amount of such insurance shall be not less than a sum equal to three months' aggregate Assessments on all Units, plus Reserve Funds.

The policy must include a provision that calls for ten days' written notice to the Association before the policy can be canceled or substantially modified for any reason. The same notice must also be given to each servicer that services a Fannie Mae-owned or securitized mortgage in the Condominium Community.

A management agent that handles funds for the Association should be covered by its own fidelity insurance policy which must provide the same coverage required of the Association.

#### 7.6 Additional Insurance.

If the area where the Condominium Community is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Condominium Community shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the Condominium Community's current replacement cost or the maximum amount available.

The Association must also maintain coverage for all Common Elements and Limited Common Elements for one hundred percent of their replacement cost as defined above. A separate Association endorsement is required if not already a part of the policy. The Association may also maintain coverage for:

(a) Adequate Directors and Officers liability insurance, if available, and if deemed consistent with good business practices, for errors and omissions on all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

(b) Worker's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter acquired by law;

(c) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to the Condominium Community.

7.7 Payment of Insurance Premiums. Insurance premiums for insurance carried by the Association shall be paid for by the Association as a Common Expense.

In the event there are not sufficient funds generated from the Common Expense Assessment to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.4(b) hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in accordance with the Owners' Common Expense Liability set forth in Paragraph 1.2(b) hereof.

7.8 Separate Insurance. No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.



7.9 Damage to Property. Any portion of the Condominium Community that is damaged or destroyed and for which insurance is carried by the Association, shall be repaired or reconstructed by the Board of Directors in accordance with ARTICLE EIGHT hereof.

7.10 Condemnation. The Board of Directors, as their attorney-in fact, shall represent the Owners in any negotiations, settlements and/or agreements with the condemning authorities for the condemnation of any part of the Common Elements or Limited Common Elements.

All compensation, damage or other proceeds therefrom (Condemnation Award) shall be payable to the Association as attorney-in-fact to be held in trust for the use and benefit of the Owners and holders of their Security Interests as their interests may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of the Condemnation Award.

Upon the complete condemnation of a Unit, all of the allocated interests of that Unit shall be reallocated as if that Unit did not exist and the Board of Directors shall promptly prepare, execute and record an amendment to this Declaration reflecting the reallocations without the necessity of the consent thereto or joinder therein by the Owners or First Mortgagees.

#### ARTICLE EIGHT: REPAIR AND RECONSTRUCTION UPON DAMAGE OR DESTRUCTION

8.1 Duty to Repair and Reconstruct. Any portion of the Common Elements which is covered by insurance carried by the Association that is damaged or destroyed must be repaired or reconstructed promptly by the Board of Directors.

8.2 Plans. The Common Elements shall be repaired and restored in accordance with the original plans and specifications.

8.3 Repair and Reconstruction by the Association. The Board of Directors or their agent, as their attorney -in-fact, shall represent the Owners in all proceedings, negotiations and agreements with the insurance companies for the settlement of any insurance claim for any part of the damaged Common Elements.

All insurance proceeds shall be payable to the Association as attorney-in-fact to be held in trust for the use and benefit of the Owners and the holders of their Security Interests as they may appear. No Owner or any other party shall be entitled to priority over First Mortgagees with respect to any distribution of insurance proceeds.

If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damage. The Board of Directors shall levy an Individual Assessment in the aggregate amount of such insufficiency pursuant to Paragraph 54(b) hereof, and shall proceed to make such repairs or reconstruction. The amount of each Owners Individual Assessment shall be such Owners Common Expense Assessment Liability determined in accordance with Paragraph 1.2(b) hereof.

#### ARTICLE NINE: MAINTENANCE, REPAIR AND RECONSTRUCTION

9.1 By the Association. The Board of Directors shall provide for the repair, maintenance and/or reconstruction of all of the Common Elements to include the Limited Common Elements. Without



limiting the generality of the foregoing and by way of illustration, the Board shall keep the said Common Elements in safe, attractive, clean, functional and good repair.

The obligation to repair, maintain or reconstruct the Limited Common Elements shall pertain to Limited Common Elements that were constructed as a part of the original construction of the Condominium Community, or any change or upgrade to the Limited Common Element approved by the Board of Directors sitting as a Design Review Committee. Any change or upgrade to a Limited Common Element from that of the original construction which has not been approved by the said Design Review Committee shall be repaired, maintained or reconstructed at the owner's sole expense and responsibility.

The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and rear and shall not apply to maintenance, repair and/or reconstruction resulting from willful neglect or destruction.

In the event such repair, maintenance and/or reconstruction is resulting from the willful neglect or destruction by an Owner or such Owners Guests, the Board of Directors shall have the right to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 3.4(b) hereof.

Determination of whether such repair, maintenance and/or reconstruction is the obligation of the Association and the determination of when, the magnitude and the manner of the above described maintenance, repair and/or reconstruction shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Paragraph 9.1 shall be made by the Board of Directors and shall be final.

#### 9.2 By the Owner.

Each Owner shall keep such Owner's Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and neat condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance and condition of such Owner's Unit.

The Owner of any Unit to which a Limited Common Element is appurtenant shall keep it in a clean and neat condition.

In addition, each Owner shall be responsible for all damage to any other Units or to the Common Elements including the Limited Common Elements resulting from his or her failure or negligence to make any of the repairs required by this Paragraph 9.2. Each Owner shall perform his or her responsibility in such manner as shall not unreasonably disturb or interfere with the other Owners. Each Owner shall promptly report to the Board of Directors any defect or need for repairs for which the Association is responsible.

Access to all of the Units within the Condominium Community to perform the said repair, maintenance and/or reconstruction by the Board of Directors, its agents and employees shall be made pursuant to the maintenance casement granted in accordance with Paragraph 3.6 hereof.

9.3 Schedule of Maintenance Responsibilities. Notwithstanding the general provisions for maintenance and repair set forth above, specific maintenance and repair responsibilities and the costs attributable thereto shall, to the extent set forth thereon, be determined pursuant to the Schedule of Maintenance and Repair Responsibilities as shown on the attached Exhibit D.

9.4 Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality, but may be done with contemporary building materials and equipment.

9.5 Additions, Alterations or Improvements by the Unit Owners (Architectural Control). No Owner shall (a) make any structural addition to such Owner's Unit, (b) paint or alter the exterior of such Owner's Unit, including the doors, windows and light fixtures, or (c) paint or alter the exterior of the Building, without the prior written consent of the Board of Directors sitting as the Design Review Committee for the Condominium Community.

In any Unit which is located above another Unit ("stacked"), the floor shall remain carpeted as it was originally installed. In the event of replacement, the carpet being installed shall be at least of the same quality and consistency as the carpet being replaced. The installation in these Units of flooring consisting of wood, tile or any other hard surface floor coverings are expressly prohibited without the prior written consent of the Board of Directors sitting as the Design Review Committee for the Condominium Community.

The Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed addition, alteration or improvement within thirty days after such request. and failure to do so within the stipulated time shall constitute approval by the Board of Directors of such proposed improvement.

#### ARTICLE TEN: DECLARANT RIGHTS

10.1 Reservation. The Declarant reserves the following Declarant Rights ("Declarant Rights") which may be exercised, where applicable, anywhere within the Condominium Community:

- (a) To complete the improvements as planned;
- (b) To exercise any Declarant Rights reserved herein;
- (c) To maintain business/sales offices, parking spaces, management offices, storage areas, nursery, construction yard, signs, advertising and model Units;
- (d) To maintain signs and advertising on the Common Elements to advertise the Condominium Community;
- (e) To use and to permit others to use easements through the Common Elements as may be reasonably necessary for construction within the Condominium Community and for the purpose of discharging Declarant's obligations under the Act and this Declaration;

(f) To amend the Declaration and/or the Map in connection with the exercise of any Declarant Rights; and

(g) To exercise any other Declarant Rights created by any other provisions of this Declaration.

10.2 Rights Transferable. Any Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the Declarant Rights transferred and recorded in the Office of the County Clerk and Recorder. Such instrument shall be executed by the transferor Declarant and the transferee.

10.3 Limitations. The Declarant Rights shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such Declarant Rights shall terminate without further act or deed five years after recording of this Declaration.

Not more than five additional Commerical Units may be created under the Development Rights, to the maximum number of Units allowed by any governmental entity having jurisdiction over the Property, pursuant to any development plan for the Property. Declarant shall not be obligated to expand the Condominium Community beyond the number of Units initially submitted to this Declaration.

10.4 Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Declarant Rights without the prior written consent of the Declarant.

10.5 Use by Declarant. The exercise of any Declarant Right by Declarant shall not unreasonably interfere with the access, enjoyment or use of any Unit by any Owner nor the access, enjoyment or use of the Common Elements; nor shall any activity be conducted which might be unsafe, unhealthy, or hazardous to any person.

10.6 Models, Sales Offices and Management Offices. Subject to the limitation set forth in Paragraph 10.3 hereof, the Declarant, its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant as a model Unit, sales, leasing and/or management office to include, but not be limited to, a sales trailer.

10.7 Declarant's Easements. The Declarant reserves the right to perform warranty work, and repairs and construction work on Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repair until completion. All work may be performed by the Declarant without the consent or approval of the Board of Directors.

The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Declarant Rights, whether arising under the Act or reserved in this Article.

10.8 Signs and Marketing. The Declarant reserves the right for Declarant to post signs and advertising in the Common Elements in order to promote sales of Units, Declarant also reserves the right for Declarant to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

#### ARTICLE ELEVEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first deeds of trusts or mortgages recorded against Units within the Condominium Community who qualify as an Eligible Mortgagee as defined by Paragraph 1.23 hereof. To the extent applicable, necessary, or proper, the provisions of this ARTICLE ELEVEN apply to both this Declaration and to the Articles and Bylaws of the Association.

11.1 Notices of Action. An Eligible Mortgagee shall be entitled to timely written notice of:

(a) any material condemnation loss or any casualty loss which affects a material portion of the Condominium Community or any Unit in which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgagee;

(b) any default in the performance by an individual borrower of any obligation of the Declaration not cured within sixty days;

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

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees; and

(e) any material judgment rendered against the Association.

11.2 Amendment to Documents/Special Approvals.

(a) The consent of Owners to which at least sixty-seven percent of the votes in the Association are allocated and the consent of fifty-one percent of the Eligible Mortgagees shall be required to add to or amend any material provisions of this Declaration or the Articles or Bylaws of the Association. A change to any of the following would be considered material.

(i) voting rights;

(ii) increase the Common Expense Assessment by more than 25% over the previously levied Common Expense Assessment or assessment liens, or a change in the priority of the assessment liens;

(iii) reduction in the reserves for maintenance, repair and replacement of the Common Elements;

(iv) responsibility for maintenance and repairs;

(v) redefinition of any Unit boundaries;

(vi) convertibility of Units into Common Elements or vice versa;

(vii) hazard or fidelity insurance requirements;

(viii) imposition of any restrictions on the leasing of Units;

(ix) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;

(x) restoration or repair of the Condominium Community (after damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xi) any provision that expressly benefits mortgage holders, insurers or guarantors: and

(xii) subject to the provisions of ARTICLE TWELVE, (a) the reallocation of interests in the Common Elements or Limited Common Elements or rights to their use, or (b) the expansion or contraction of the Condominium Community; or (c) the addition, annexation or withdrawal of property to or from the Condominium Community.

(b) The Association may not take any of the following actions without the consent of Owners to which at least sixty-seven percent of the votes in the Association are allocated and the approval of at least fifty-one percent of the Eligible Mortgagees:

(i) reconstruct or repair the Condominium Community after damage due to an insurable hazard or a partial condemnation in a manner other than specified in the Project Documents;

(ii) merge or consolidate the Condominium Community with any other Condominium Community or subject it to a Master Association. Such action shall also require the written approval from the Federal Housing Administration and/or the Veterans Administration if the Condominium Community has been or may be approved by such agencies;

(iii) not repair or reconstruct, in the event of substantial destruction, any part of the Common Elements; or

(iv) alter any partition or the creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), for which only the owners of Units affected and Eligible Mortgagees of those Units need approve the action.

(c) Any action to terminate the legal status of the Condominium Community after substantial destruction or condemnation occurs must be agreed to by Owners to which at least sixty-seven percent of the votes in the Association are allocated, and by fifty-one percent of the Eligible Mortgagees.

(d) Any action to terminate the legal status of the Condominium Community for reasons other than substantial destruction or condemnation must be agreed to by Owners to which at least sixty seven percent of the votes in the Association are allocated, and by sixty-seven percent of the Eligible Mortgagees.

11.3 Special PHLMC Provisions. Except as provided by statute or in case of a condemnation or a substantial loss to the Units and/or Common Elements, and unless the consent of sixty-seven percent of the Eligible Mortgagees or Owners (other than Declarant) have given their prior written approval, the Association may not:

- (a) by act or omission seek to abandon or terminate the Condominium Community;
- (b) subject to the provisions of ARTICLE TWELVE hereof, change the pro rata interest or obligations of any Unit in order to levy assessments, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each. Unit in the Common Elements;
- (c) partition or subdivide any Unit;
- (d) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission;

The granting of easements for public utilities or other purposes consistent with the intended use of the Common Elements is not a transfer within the meaning of this Paragraph 11.3(d); or

- (e) use hazard insurance proceeds for losses to any condominium property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the condominium property.

11.4 Implied Approval. Implied approval by an Eligible Mortgagee shall be assumed when an Eligible Mortgagee fails to submit a response to any written proposal for an amendment or consent as required by the Project Documents within thirty days after said Eligible Mortgagee receives proper notice of the proposal, provided this notice was delivered by certified or registered mail with return receipt requested.

11.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at the office of the Association in accordance with the procedure set forth in the Association's Bylaws.

## ARTICLE TWELVE· MANDATORY DISPUTE RESOLUTION

12.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

12.2 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors; all Owners; design professionals; builder including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party"), agree to encourage the amicable resolution of disputes involving the Condominium Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims each may have to the procedures set forth in this ARTICLE TWELVE and not to a court of law.



12.3 Claims. Except as specifically excluded in Paragraph 12.4, all claims, disputes and other controversies arising out of or relating to the:

- (a) Contract for Sale and Purchase between Declarant and Buyer;
- (b) the Property (as defined in said Contract) and the Unit, including any alleged design and/or construction defect therein ;
- (c) purchase of the Property or the Unit;
- (d) interpretation, application or enforcement of this Declaration;
- (e) land development, design and/or construction of the improvements within the Condominium Community and/or any alleged defect therein;
- (f) rights, obligations and duties of any Bound Party under this Declaration; and/or
- (g) breach thereof,

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with ARTICLE TWELVE of this Declaration and not in a court of law.

12.4 Exempt Claims. Unless Owners to whom at least sixty-seven percent of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this ARTICLE TWELVE:

- (a) any suit by the Association against any Bound Party to enforce the provisions of ARTICLE FIVE (Assessments); and
- (b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Paragraph 9.5 (Architectural Control), or ARTICLE SIX (Restrictive Covenants and Obligations); and
- (c) any suit by an Owner to challenge the actions of Declarant, the Association, the Declarant acting as the Design Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Paragraph 9.5 (Architectural Control);
- (d) any suit between or among Owners, which does not include Declarant or the Association as a party; and
- (e) any suit in which any indispensable party is not a Bound Party.

12.5 Notice of Claim. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

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

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

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

12.6 Timely Initiation. All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

12.7 Right to be Heard. Upon receipt of a Claim and prior to the Association or any Member asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this ARTICLE TWELVE, Declarant shall have the right to be heard by the Claimant, affected Owners, and Association in an effort to resolve the Claim.

12.8 Right to Inspect. If the Claim is based on the land development, design and/or construction of the improvements within the Planned Community then, subject to Owner's prior written approval which shall not be unreasonably withheld, Declarant shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but not be limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

(a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Property");

(b) minimize any disruption or inconvenience to any person who occupies the Property;

(c) remove daily all debris caused by the inspection and located on the Property; and

(d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Property and repair and replace all damage, and restore the Property to the condition of the Property as of the date of the inspection, unless the Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Property that were damaged, removed or destroyed by inspecting Party in the event the inspecting Party wishes to make appropriate and necessary repairs to resolve the subject matter of the Claim, the same shall be made upon terms and conditions acceptable to all affected parties.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Property. The Inspecting Party shall indemnify, defend and hold harmless the owners, tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from any breach of this Article by the inspecting Party

12.9 The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such Party in negotiations.

12.10 Mediation. If the Parties do not resolve the Claim through negotiations within thirty days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties. Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service acceptable to all Parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondents, shall be released and discharged from any and all liability to Claimant on account of such Claim.

(a) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(b) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(c) Within ten days after issuance of a Termination of Mediation, the Claimant shall make a final written Settlement Demand to the Respondent(s), and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(e) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this ARTICLE TWELVE and any Party thereafter fails to abide by the terms of such agreement, then any other Affected Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this ARTICLE TWELVE. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

12.1 Consensus for Association Arbitration or Litigation. Except as provided in this ARTICLE TWELVE, the Association shall not commence any arbitration or a judicial or administrative proceeding unless Owners to which at least sixty-seven percent of the votes in the Association are allocated agree to such proceedings.

This Paragraph 12.11 shall not apply, however, to:

(a) actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens);

(b) the imposition and collection of Assessments, Fines, costs and attorney fees or other specific amounts due under the Declaration; or

(c) counterclaims brought by the Association in proceedings instituted against it.

12.12 Arbitration. If the Parties do not reach a settlement of the Claim within 15 days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have 15 additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit C hereof and deliver an Arbitration Notice to all Respondent(s).

(a) The Parties agree that where any claim, dispute or other controversy existing between them is submitted to arbitration, and any other Bound Party may have liability with respect thereto, all Parties including any third parties agree that the third parties may be joined as additional parties in the arbitration or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the Parties to resolve all rights and obligations of all interested Parties at one time in one forum rather than in multiple proceedings.

(b) If the Claim(s) are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claims shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims.

(c) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. The party seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award.

(d) The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.

(e) The Association or the Owner shall notify the Declarant prior to retaining any Person or entity as an expert witness for purposes of any arbitration or authorized litigation.

12.13 Binding Effect. This ARTICLE TWELVE and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

12.12 Amendment. This ARTICLE TWELVE shall not be amended unless such amendment is approved by Owners to whom at least sixty-seven percent percent of the votes in the Association are allocated; provided, however, that if the amendment shall permit a Claim to proceed against Declarant other than by arbitration as set forth in this ARTICLE TWELVE, Declarant's written consent to such amendment shall be required. .

#### ARTICLE THIRTEEN: DURATION, AMENDMENT AND TERMINATION OF THE DECLARATION

13.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land in perpetuity until this Declaration is terminated in accordance with Paragraph 14.7 below.

13.2 Amendments by Owners. Except in case of amendments that may be executed by the Board of Directors pursuant to Paragraphs 1.30 and 7.10 and the Declarant pursuant to ARTICLE ELEVEN and Paragraphs 1.30 and 14.3, and except as restricted by Paragraphs 11.2, 11.3 and 13.5 hereof, this Declaration, including the Map, may be amended by written agreement by Owners to which at least sixty-seven percent of the Votes in the Association are allocated; provided, however, an amendment may not, except as provided for in ARTICLE TWELVE hereof: (a) create or increase Declarant Rights; (b)



increase the number of Units; (c) change the uses to which a Unit is restricted; or (d) change the Allocated Interests of a Unit except as approved in writing by Owners to which at least sixty-seven percent of the votes in the Association are allocated, including sixty-seven percent of the votes allocated to Units not owned by the Declarant.

Notwithstanding any other provisions set forth in this Declaration, there shall be no reallocation of interests in a Limited Common Element which is appurtenant to a Unit or redefinition of Unit boundaries without the express prior written consent of the Owner affected.

Any such amendment shall be effective upon the recording of the amendment together with a notarized Certificate of an officer of the Association certifying that the requisite number of Owners and Eligible Mortgagees, if required, have given their written consent to the amendment. The officer shall further certify that originals of such written consents by Owners and Eligible Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

Each amendment to the Declaration must be recorded in the Office of the County Clerk and Recorder.

Signatures of Owners on the amendment need not be notarized.

All signatures shall be irrevocable even upon the death of an Owner or the conveyance of the Unit, except that if an amendment is not recorded within three years of the date of signature, then the executing Owner or their successor or assigns may revoke their signature by a written and notarized document delivered to the Secretary of the Association.

Amendments can be executed in counterparts, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are part of the whole.

No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one year from the date of the recording of the said amendment, unless fraud or willful negligence is asserted and proven.

13.3 Amendments by Declarant. Declarant reserves the right to amend, without the consent of Owners or First Mortgagees this Declaration, the Map, the Association's Articles of Incorporation or Bylaws, any time within the limitations set forth in Paragraph 10.3 hereof, as follows:

- (a) To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
- (b) To comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgagees.
- (c) To comply with any requirements of the Act.

Said amendments cannot impair the lien of a First Mortgagee nor any warranties made to any First Mortgagee prior to the amendment.

13.4 Consent of Eligible Mortgagees. Amendments may be subject to the consent requirements of Eligible Mortgagees as more fully set forth in ARTICLE ELEVEN hereof.

13.5 Consent of Declarant. Any proposed amendment of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment.

The foregoing requirement for consent of Declarant to any amendment shall terminate at the option of the Declarant, but in any event, shall terminate without further act or deed in accordance with the limitations set forth in Paragraph 10.3 hereof.

13.6 FHA/VA Approval. If the Condominium Community has been or may be approved by the Federal Housing Administration and/or the Veterans Administration, then until the termination of the Period of Declarant Control in accordance with Paragraph 4.7 hereof, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration; annexation of additional properties, amendment of this Declaration, amendment to the Association Bylaws and the assessment of a Special Assessment.

13.7 Termination. The Condominium Community may be terminated only in accordance with Paragraphs 11.2(c) and (d) hereof.

The proceeds of any sale of real estate together with the assets of the Association shall be held by the Board of Directors as trustee for Owners and holders of Security Interests upon the Units as their interests may appear as more fully set forth in § 38-33.3-218 of the Act.

#### ARTICLE FOURTEEN: GENERAL PROVISIONS

14.1 Right of Action. Subject to the provisions of ARTICLE THIRTEEN hereof, the Association and any aggrieved Owner shall have an appropriate right of action against Owners for failure to comply with the Declaration, Bylaws of the Association, Articles of Incorporation and Rules and Regulations of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto. Owners shall have a similar right of action against the Association.

14.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

14.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision has never been included herein.

14.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

14.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.

All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the Registered Agent for the Association on file in the Office of the Secretary of State, State of Colorado.

15.6 Conflict. The Project Documents are intended to comply with the requirements of the Act and the Colorado Revised Nonprofit Corporation Act. If there is any conflict between the said Documents and due provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Project Documents, this Declaration shall control.

In the event either the Articles of Incorporation or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control.

14.7 Certificate of Completion. The Certificate of Completion required by § 38-33.3-201(2) of the Act is found on the Map.

14.8 Captions. The captions and headings in this Declaration are for convenience only, and shall not be considered in construing any provision of this Declaration.

14.9 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 9th day of May, 2007.

MT. ROYAL LODGE, LLC.  
a Colorado Limited Liability Company

By: Peter S. Campbell  
Peter S. Campbell, Manager

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF SUMMIT            )

The foregoing instrument was acknowledged before me this 9th day of May, 2007, by Peter Campbell as Manager of MT. ROYAL LODGE, LLC, a Colorado Limited Liability Company.

My commission expires: 4-27-08  
WITNESS my hand and official seal:



My Commission Expires Apr. 27, 2008

Cynthia Thompson  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**LOTS 1 AND 2, LARK MOUNTAIN INN, ACCORDING TO THE PLAT RECORDED  
OCTOBER 21, 2002 AT RECEPTION NO. 699201, SUMMIT COUNTY, COLORADO**



**EXHIBIT B  
MOUNT VICTORIA LODGE**

**TABLE OF ALLOCATED INTERESTS<sup>1</sup>**

<b>Unit</b>	<b>Floor Area (Sq. Ft.)</b>	<b>Allocated Interest Common Expense</b>	<b>Residential Interest Allocation</b>	<b>Commercial Interest Allocation</b>	<b>Garage Allocation</b>
1	1,074	0.052	0	0.297	0
2	1,037	0.050	0	0.287	0
3	1,501	0.072	0	0.416	0
A	1,648	0.080	0.097	0	0.097
B	1,981	0.096	0.116	0	0.116
C	1,850	0.089	0.108	0	0.108
D	1,982	0.096	0.116	0	0.116
E	1,605	0.078	0.094	0	0.094
F	963	0.047	0.056	0	0.056
G	1,728	0.083	0.102	0	0.102
H	1,695	0.082	0.099	0	0.099
I	1,653	0.080	0.097	0	0.097
J	1,962	0.095	0.115	0	0.115
Totals		1.0	1.0	1.0	1.0

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<sup>1</sup> Each Unit in the Condominium Community is (a) hereby vested with an individual percentage ownership interest in and to the Common Elements; and (b) is subject to the Common Expense Assessment Liability; and (c) is granted voting rights as set forth in the following table. The Common Expense Assessment Liability and the Percentage Ownership Interest in the Common Elements of each Owner has been allocated by the Declarant in accordance with Paragraph 1.2 of this Declaration. Percentage are also established for commercial and residential voting and expense allocations, and also for the Garage Assessment.

**EXHIBIT C**  
**THE MOUNT VICTORIA LODGE**

**ARBITRATION PROCEDURES**

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an Arbitrator within 30 days from the date of the Arbitration Notice, the presiding judge of the District Court in which the Condominium Community is located shall appoint a qualified arbitrator upon application of a party.
3. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.
4. The Arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Condominium Community is located unless otherwise by the Parties.
5. Except as modified herein the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
6. No formal discovery shall be conducted in the absence of an order of the Arbitrator or express written agreement among all the Parties.
7. Unless directed by the Arbitrator, there will be no post-hearing briefs.
8. The Arbitration Award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing and shall be signed by the Arbitrator.
9. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.