

#246

DECLARATION FOR  
TENDERFOOT LODGE CONDOMINIUM



## TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE 1. IMPOSITION OF COVENANTS .....	1
Section 1.1. <u>Purpose</u> .....	1
Section 1.2. <u>Intention of Declarant</u> .....	1
Section 1.3. <u>Declaration</u> .....	1
Section 1.4. <u>Covenants Running With the Land</u> .....	1
ARTICLE 2. DEFINITIONS .....	1
Section 2.1. " <u>Act</u> " .....	2
Section 2.2. " <u>Allocated Interests</u> " .....	2
Section 2.3. " <u>Assessments</u> " .....	2
Section 2.4. " <u>Association</u> " .....	2
Section 2.5. " <u>Board of Managers</u> " or " <u>Board</u> " .....	2
Section 2.6. " <u>Bylaws</u> " .....	2
Section 2.7. " <u>Common Elements</u> " .....	2
Section 2.8. " <u>Common Expense Liability</u> " .....	3
Section 2.9. " <u>Common Expenses</u> " .....	3
Section 2.10. " <u>Condominium Map</u> " or " <u>Map</u> " .....	3
Section 2.11. " <u>Condominium Project</u> " or " <u>Project</u> " .....	3
Section 2.12. " <u>Condominium Unit</u> " .....	4
Section 2.13. " <u>Costs of Enforcement</u> " .....	4
Section 2.14. " <u>Declarant</u> " .....	4
Section 2.15. " <u>Declaration</u> " .....	4
Section 2.16. " <u>Development Rights</u> " .....	4
Section 2.17. " <u>Eligible First Mortgagee</u> " .....	4
Section 2.18. " <u>First Mortgagee</u> " .....	4
Section 2.19. " <u>Improvements</u> " .....	4
Section 2.20. " <u>Limited Common Elements</u> " .....	4
Section 2.21. " <u>Management Agreement</u> " .....	5
Section 2.22. " <u>Managing Agent</u> " .....	5
Section 2.23. " <u>Occupant</u> " .....	5
Section 2.24. " <u>Period of Declarant Control</u> " .....	5
Section 2.25. " <u>Plat</u> " .....	5
Section 2.26. " <u>Project Documents</u> " .....	5
Section 2.27. " <u>Property</u> " .....	5
Section 2.28. " <u>Purchaser</u> " .....	5
Section 2.29. " <u>Real Estate</u> " .....	6
Section 2.30. " <u>Records</u> " .....	6
Section 2.31. " <u>Rules and Regulations</u> " .....	6
Section 2.32. " <u>Security Interest</u> " .....	6
Section 2.33. " <u>Special Declarant Rights</u> " .....	6
Section 2.34. " <u>Unit</u> " .....	6
Section 2.35. " <u>Unit Owner</u> " .....	6

ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP .....	6
Section 3.1. <u>Division Into Condominium Units</u> .....	6
Section 3.2. <u>Delineation of Unit Boundaries</u> .....	7
Section 3.3. <u>Inseparability of Condominium Unit</u> .....	7
Section 3.4. <u>Nonpartitionability of Common Elements</u> .....	7
Section 3.5. <u>Alterations and Subdivision of Units; Relocation of Boundaries Between                   Adjoining Units</u> .....	7
ARTICLE 4. ALLOCATED INTERESTS .....	7
Section 4.1. <u>Allocation of Interests</u> .....	7
Section 4.2. <u>Formulas for the Allocation of Interests</u> .....	8
Section 4.3. <u>Rounding Convention</u> .....	8
Section 4.4. <u>Effective Date of Reallocation</u> .....	8
ARTICLE 5. CONDOMINIUM MAP .....	8
ARTICLE 6. LEGAL DESCRIPTION AND TAXATION OF UNITS .....	9
Section 6.1. <u>Contracts to Convey Entered into Prior to Recording of Declaration and                   Map</u> .....	9
Section 6.2. <u>Contracts to Convey and Conveyances Subsequent to Recording of                   Declaration and Map</u> .....	9
Section 6.3. <u>Conveyance Deemed to Describe an Undivided Interest in Common                   Elements</u> .....	10
Section 6.4. <u>Separate Tax Assessments</u> .....	10
ARTICLE 7. UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS .....	10
Section 7.1. <u>Common Elements</u> .....	10
Section 7.2. <u>Limited Common Elements</u> .....	11
ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION .....	11
Section 8.1. <u>Association Membership</u> .....	11
Section 8.2. <u>Voting Rights and Meetings</u> .....	11
Section 8.3. <u>Meeting to Approve Annual Budget</u> .....	12
Section 8.4. <u>Unit Owners' and Association's Addresses for Notices</u> .....	12
Section 8.5. <u>Transfer Information</u> .....	13
Section 8.6. <u>Declarant Control of the Association</u> .....	13
Section 8.7. <u>Required Election of Unit Owners</u> .....	13
Section 8.8. <u>Removal of Members of the Board of Managers</u> .....	14
Section 8.9. <u>Requirements for Turnover of Declarant Control</u> .....	14

ARTICLE 9. ASSOCIATION POWERS AND DUTIES .....	15
Section 9.1. <u>Association Management Duties</u> .....	15
Section 9.2. <u>Association Powers</u> .....	15
Section 9.3. <u>Actions by Board of Managers</u> .....	17
Section 9.4. <u>Board of Managers Meetings</u> .....	17
Section 9.5. <u>Right to Notice and Hearing</u> .....	18
Section 9.6. <u>Payments to Working Capital Account</u> .....	18
 ARTICLE 10. ASSESSMENTS .....	 19
Section 10.1. <u>Commencement of Annual Assessments</u> .....	19
Section 10.2. <u>Annual Assessments</u> .....	19
Section 10.3. <u>Apportionment of Annual Assessments</u> .....	19
Section 10.4. <u>Special Assessments</u> .....	19
Section 10.5. <u>Due Dates for Assessment Payments</u> .....	20
Section 10.6. <u>Default Assessments</u> .....	20
Section 10.7. <u>Covenant of Personal Obligation for Assessments</u> .....	20
Section 10.8. <u>Lien for Assessments; Assignment of Rents</u> .....	20
Section 10.9. <u>Remedies for Nonpayment of Assessments</u> .....	21
Section 10.10. <u>Purchaser's Liability for Assessments</u> .....	21
Section 10.11. <u>Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments</u> .....	22
Section 10.12. <u>Statement of Status of Assessments</u> .....	23
Section 10.13. <u>Liens</u> .....	23
 ARTICLE 11. MAINTENANCE RESPONSIBILITY .....	 24
Section 11.1. <u>Unit Owner's Rights and Duties with Respect to Interiors</u> .....	24
Section 11.2. <u>Responsibility of the Unit Owner</u> .....	24
Section 11.3. <u>Unit Owner's Negligence</u> .....	24
Section 11.4. <u>Responsibility of the Association</u> .....	24
 ARTICLE 12. MECHANICS' LIENS .....	 25
Section 12.1. <u>Mechanics' Liens</u> .....	25
Section 12.2. <u>Enforcement by the Association</u> .....	25
 ARTICLE 13. USE RESTRICTIONS .....	 25
Section 13.1. <u>Use of Units</u> .....	25
Section 13.2. <u>Use of Common Elements</u> .....	25
Section 13.3. <u>Prohibition of Increases in Insurable Risks and Certain Activities</u> .....	25
Section 13.4. <u>Structural Alterations and Exterior Appearance</u> .....	26
Section 13.5. <u>Use Restrictions</u> .....	26
Section 13.6. <u>Prohibition of Timesharing</u> .....	27
Section 13.7. <u>Restriction on Signs</u> .....	27

ARTICLE 14. EASEMENTS .....	27
Section 14.1. <u>Easement of Enjoyment</u> .....	27
Section 14.2. <u>Delegation of Use</u> .....	27
Section 14.3. <u>Recorded Easements</u> .....	27
Section 14.4. <u>Easements for Encroachments</u> .....	27
Section 14.5. <u>Utility Easements</u> .....	28
Section 14.6. <u>Emergency Access Easement</u> .....	28
Section 14.7. <u>Maintenance Easement</u> .....	28
Section 14.8. <u>Easements of Access for Repair, Maintenance, and Emergencies</u> .....	29
Section 14.9. <u>Easements Deemed Created</u> .....	29
 ARTICLE 15. SPECIAL DECLARANT RIGHTS .....	 29
Section 15.1. <u>Special Declarant Rights</u> .....	29
Section 15.2. <u>Limitations on Special Declarant Rights</u> .....	30
Section 15.3. <u>Interference with Special Declarant Rights</u> .....	30
Section 15.4. <u>Rights Transferable</u> .....	30
 ARTICLE 16. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS .....	 30
Section 16.1. <u>Reservation</u> .....	30
Section 16.2. <u>Correction of Errors</u> .....	31
Section 16.3. <u>No Waiver</u> .....	31
Section 16.4. <u>Supplement to the Map</u> .....	31
Section 16.5. <u>Transfer of Expansion and Development Rights</u> .....	31
 ARTICLE 17. INSURANCE .....	 31
Section 17.1. <u>Coverage</u> .....	31
Section 17.2. <u>Required Provisions</u> .....	32
Section 17.3. <u>Adjustment of Claims</u> .....	33
 ARTICLE 18. RESTORATION UPON DAMAGE OR DESTRUCTION .....	 33
Section 18.1. <u>Duty to Restore</u> .....	33
Section 18.2. <u>Cost</u> .....	34
Section 18.3. <u>Plans</u> .....	34
Section 18.4. <u>Replacement of Less Than Entire Property</u> .....	34
Section 18.5. <u>Insurance Proceeds</u> .....	34
Section 18.6. <u>Certificates by the Board of Managers</u> .....	34
Section 18.7. <u>Certificates by Attorneys or Title Insurance Companies</u> .....	35
Section 18.8. <u>Right of First Refusal</u> .....	35
 ARTICLE 19. CONDEMNATION .....	 35

ARTICLE 20. MORTGAGEE PROTECTIONS .....	35
Section 20.1. <u>Introduction</u> .....	35
Section 20.2. <u>Percentage of First Mortgagees</u> .....	36
Section 20.3. <u>Notice of Actions</u> .....	36
Section 20.4. <u>Consent Required</u> .....	36
Section 20.5. <u>Additional Consent Requirements</u> .....	37
Section 20.6. <u>Notice of Objection</u> .....	37
Section 20.7. <u>First Mortgagees' Rights</u> .....	37
Section 20.8. <u>Limitations on First Mortgagee's Rights</u> .....	38
Section 20.9. <u>Special Declarant Rights</u> .....	38
 ARTICLE 21. DURATION OF COVENANTS; AMENDMENT AND TERMINATION ...	38
Section 21.1. <u>Term</u> .....	38
Section 21.2. <u>Amendment of Declaration</u> .....	38
Section 21.3. <u>Execution of Amendments; Expenses</u> .....	38
Section 21.4. <u>When Modifications Permitted</u> .....	39
Section 21.5. <u>Recording of Amendments</u> .....	39
Section 21.6. <u>Termination of the Condominium Project</u> .....	39
 ARTICLE 22. MISCELLANEOUS .....	39
Section 22.1. <u>Enforcement</u> .....	39
Section 22.2. <u>Nonwaiver</u> .....	39
Section 22.3. <u>Severability</u> .....	39
Section 22.4. <u>Number and Gender</u> .....	39
Section 22.5. <u>Captions</u> .....	39
Section 22.6. <u>Conflicts in Legal Documents</u> .....	40
Section 22.7. <u>Exhibits</u> .....	40
Section 22.8. <u>Choice of Law</u> .....	40

## DECLARATION FOR TENDERFOOT LODGE CONDOMINIUM

THIS DECLARATION FOR TENDERFOOT LODGE CONDOMINIUM (the "Declaration"), dated July \_\_\_\_\_, 1997, shall be effective upon recordation and is made by Tenderfoot Lodge Limited Partnership, a Colorado limited partnership ("Declarant"). Declarant is the owner of certain real property in Summit County, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, reservations, covenants, restrictions and declarations:

### ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1. Purpose. The purpose of this Declaration is to create a condominium project known as Tenderfoot Lodge Condominium (the "Condominium Project" or "Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act").

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

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

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

### ARTICLE 2. DEFINITIONS

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

Section 2.1: "Act" means the Colorado Common Interest Ownership Act as defined in Section 1.1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2. "Allocated Interests" means the undivided interest in the Common Elements, the Common Expense Liability and the votes in the Association allocated to each of the Units in the Condominium Project. The formulas used to establish the Allocated Interests are described in Article 4. The Allocated Interests for each Unit are set forth on Exhibit B.

Section 2.3. "Assessments" means the annual, special and default Assessments levied pursuant to this Declaration.

Section 2.4. "Association" means the Tenderfoot Lodge Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.5. "Board of Managers" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association and in the Act.

Section 2.6. "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto.

Section 2.7. "Common Elements" means all of the Condominium Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

(a) the Property; and

(b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, balconies, entrances and exits, and the mechanical installations of the Improvements consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, cable television, and heating and central air-conditioning which exist for use by one or more of the Unit Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), except for the Units; and

(c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property; and



Section 2.12. "Condominium Unit" means the fee simple interest in and to a Unit, together with the undivided interest in the Common Elements appurtenant to the Unit as allocated in Exhibit B.

Section 2.13. "Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorneys' fees and disbursements (including legal assistants' fees) incurred by the Association in connection with the collection of annual, special, and default Assessments or in connection with the enforcement of the terms, conditions and obligations of the Project Documents.

Section 2.14. "Declarant" means Tenderfoot Lodge Limited Partnership, a Colorado limited partnership, and its successors and assigns.

Section 2.15. "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated which exercises a Development Right, executed by Declarant and recorded in the Records. The term Declaration includes all Maps and Plats recorded with this Declaration without specific reference thereto.

Section 2.16. "Development Rights" means the Declarant's rights set forth in Article 16 of this Declaration.

Section 2.17. "Eligible First Mortgagee" means a First Mortgagee which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for in Article 20 of this Declaration.

Section 2.18. "First Mortgagee" means a holder of a Security Interest on a Unit which has priority over all other Security Interests on the Unit.

Section 2.19. "Improvements" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located.

Section 2.20. "Limited Common Elements" means those parts of the Common Elements which are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, stoops or porch designated to serve a single Unit, storage spaces and ski lockers outside Units designated as Limited Common Elements in this Declaration or on the Map, if any; and (subject to Section 11.2 of this Declaration) the non-load bearing, interior partition walls within a Unit. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving 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. Limited Common Elements also

(d) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of the Unit Owners; and

(e) in general, all other parts of the Condominium Project designated by Declarant as Common Elements and existing for the use of the Unit Owners.

The Common Elements shall be owned by the Unit Owners of the separate Units, each Unit Owner of a Unit having an undivided interest in the Common Elements as allocated in Exhibit B.

Section 2.8. "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.9. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of a Unit Owner as provided in this Declaration;

(b) expenses declared Common Expenses by the provisions of the Act, this Declaration or the Bylaws;

(c) all sums lawfully assessed against the Units by the Board of Managers;

(d) expenses agreed upon as Common Expenses by the members of the Association; and

(e) expenses provided to be paid pursuant to any Management Agreement.

Section 2.10. "Condominium Map" or "Map" means that part of this Declaration that depicts all or any portion of the Condominium Project in three dimensions, is executed by the Declarant and is recorded in the Records. A Map and a Plat may be combined in one instrument. In a Map, a "Horizontal Boundary" means a plane of elevation relative to a described benchmark that defines either a lower or upper dimension of a Unit such that the Real Estate respectively below or above the defined plane is not part of the Unit. In a Map, a "Vertical Boundary" means the defined limit of a Unit that is not a Horizontal Boundary of that Unit.

Section 2.11. "Condominium Project" or "Project" shall have the meaning stated in Section 1.1 hereof.

include any portion of the Common Elements allocated by this Declaration or on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Unit Owners, except by invitation. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, ceilings and floors of any balcony or of any other Limited Common Elements appurtenant to and accessible only from the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.21. "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Managers relative to the operation, maintenance, and management of the Condominium Project.

Section 2.22. "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.23. "Occupant" means any member of a Unit Owner's family, or a Unit Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Unit for any period of time.

Section 2.24. "Period of Declarant Control" means the maximum period of time defined and limited by the Act and Section 8.6 of this Declaration during which the Declarant may, at its option, control the Association.

Section 2.25. "Plat" means that part of a Declaration that is a land survey plat as set forth in Section 38-51-106, Colorado Revised Statutes, as amended, and which depicts all or any portion of the Condominium Project in two dimensions, is executed by the Declarant and is recorded in the Records.

Section 2.26. "Project Documents" means the basic documents creating and governing the Condominium Project, including, but not limited to, this Declaration, the Articles of Incorporation of the Association and Bylaws, the Map, and any procedures, Rules and Regulations, or policies relating to the Condominium Project adopted under such documents by the Association or the Board of Managers.

Section 2.27. "Property" means the real property described in the attached Exhibit A.

Section 2.28. "Purchaser" means a person, other than a Declarant, who by means of a transfer acquires a legal or equitable title in a Unit, other than a leasehold estate in a Unit of less than forty (40) years or a Security Interest.

Section 2.29. "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.30. "Records" means the Office of the Clerk and Recorder in every county in which any portion of the Condominium Project is located.

Section 2.31. "Rules and Regulations" means the rules and regulations promulgated by the Board of Managers for the management, preservation, safety, control, and orderly operation of the Condominium Project in order to effectuate the intent and to enforce the obligations set forth in the Project Documents, as amended and supplemented from time to time.

Section 2.32. "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.33. "Special Declarant Rights" means those rights reserved by Declarant in Article 15 of this Declaration.

Section 2.34. "Unit" means a physical portion of the Condominium Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Condominium Project as more specifically set forth on Exhibit B. If walls, floors, or ceilings are designated as boundaries of a Unit in this Declaration all lath, furring, wall board, plaster board, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements.

Section 2.35. "Unit Owner" means the Declarant or any other person (including any entity) who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Unit unless such person has acquired record title to the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure.

### ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1. Division Into Condominium Units. The Property is hereby divided into 72 Condominium Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in

the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The total of the undivided interests in the Common Elements set forth in Exhibit B shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

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

Section 3.3. Inseparability of Condominium Unit. Except as provided in Section 3.5 below, no part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration. Each Condominium Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Condominium Unit. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Condominium Unit or any part thereof shall be presumed to be a disposition of the entire Condominium Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Unit Owner's membership in the Association.

Section 3.4. Nonpartitionability of Common Elements. The Common Elements shall be owned in common by all of the Unit Owners and shall remain physically undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Condominium Unit, each Unit Owner of the Condominium Unit shall be deemed to have specifically waived such Unit Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Unit Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5. Alterations and Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Upon application and approval as provided by Section 13.4, Unit Owner(s) shall have the right to alter their Units, subdivide their Units, relocate boundaries between their Unit and an adjoining Unit or reallocate Limited Common Elements between or among Units subject to the provisions and requirements of the Act.

#### ARTICLE 4. ALLOCATED INTERESTS

Section 4.1. Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulas set out in Section 4.2 below. These formulas are to be used in reallocating interests as may be necessary under the terms of this Declaration or if Units are (a) added to the Condominium Project; (b) converted to Common Elements or Limited Common Elements; (c) withdrawn from

the Condominium Project; or (d) reconfigured or subdivided as may be permitted by the Act and Section 3.5 of this Declaration.

Section 4.2. Formulas for the Allocation of Interests. The Interests allocated to each Unit have been calculated on the following formulas:

(a) Undivided interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based upon the relative floor area of each Unit as compared to the floor area of all Units in the Condominium Project.

(b) Common Expenses Liability. The percentage of liability for Common Expenses allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all Units in the Condominium Project.

(c) Votes. Each Unit in the Condominium Project shall have one equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Project Documents, means the specified percentage, portion, or fraction of all of the votes.

Section 4.3. Rounding Convention. The total of any Allocated Interests stated as a fraction, shall be rounded up to the nearest one one-hundredth percent (.01%) and shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

Section 4.4. Effective Date of Reallocation. The effective date for reallocating Allocated Interests to Units as a result of any of the events described in Section 4.1 shall be the date on which an amendment to this Declaration effecting such change is recorded in the Records.

## ARTICLE 5. CONDOMINIUM MAP

The Map shall be filed in the Records. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a Purchaser. The Map shall include a Plat which shows the following:

- (a) the name and a general schematic map of the entire Condominium Project;
- (b) the location and dimensions of all Real Estate not subject to Development Rights, or subject only to the Development Rights to withdraw, and the location and dimensions of all existing improvements within that Real Estate;
- (c) a legally sufficient description of any Real Estate subject to Development Rights, labeled to identify the rights applicable to it;

- (d) the extent of any existing encroachments across any Condominium Project boundary;
- (e) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Condominium Project;
- (f) the distance between any noncontiguous parcels of Real Estate comprising the Condominium Project;
- (g) the location and dimensions of the vertical boundaries of each Unit and that Unit's identifying number;
- (h) horizontal Unit boundaries, if any, with reference to all established data;
- (i) any Units in which the Declarant has reserved the right to create additional Units or Common Elements, identified appropriately;
- (j) the approximate location and dimensions of all Limited Common Elements; and
- (k) the number, size and location of any sales offices, management offices and models to be maintained by Declarant.

The Map shall contain a certificate of a registered and licensed land surveyor certifying that the Map was prepared subsequent to the substantial completion of the improvements and contains all information required by this Declaration and the Act. Each supplement or amendment shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

## ARTICLE 6. LEGAL DESCRIPTION AND TAXATION OF UNITS

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

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

Unit \_\_\_\_, Tenderfoot Lodge Condominium, according to the Declaration for Tenderfoot Lodge Condominium recorded \_\_\_\_\_, 19 \_\_\_\_, in the office of the Clerk and Recorder of Summit County, Colorado, under Reception No. \_\_\_\_\_ and the Condominium Map recorded \_\_\_\_\_, 19 \_\_\_\_, under Reception No. \_\_\_\_\_.

Section 6.3. Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it, and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.4. Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the Assessor of each County specified in the Records as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit.

## ARTICLE 7. UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 7.1. Common Elements. Every Unit Owner and Occupant shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

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

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

(c) the right of the Association to adopt, from time to time, any and all Rules and Regulations concerning the Condominium Project as the Association may determine are necessary or prudent for the management, preservation, safety, control and orderly operation of the Condominium Project for the benefit of all Unit Owners and Occupants, and for facilitating the greatest and most convenient availability and use of the Units and Common Elements by Unit Owners and Occupants.



Section 7.2. Limited Common Elements. Subject to the provisions of this Declaration, every Unit Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit. The Association shall have the power to adopt Rules and Regulations governing the use of the Limited Common Elements pursuant to Section 7.1(c).

## ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 8.1. Association Membership. The Association's Articles of Incorporation shall be filed no later than the date the first Unit in the Condominium Project is conveyed to a Purchaser. Every Unit Owner shall be a member of the Association and shall remain a member for the period of the Unit Owner's ownership of a Unit. No Unit Owner, whether one or more persons or entity, shall have more than one membership per Unit owned, but all of the persons or entities owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity, or entities shall by written instrument executed by all such parties and delivered to the Association appoint and authorize one person or alternate persons to represent the Unit Owners of the Unit. Such representative shall be a natural person who is a Unit Owner, or a designated board member or officer of a corporate Unit Owner, or a general partner of a partnership Unit Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Unit Owners as a member of the Association, and serve on the board of Managers if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if the Association has not received the written instrument required above and if only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, such Unit Owner is entitled to cast the vote allocated to that Unit. If the Association has not received the written instrument required above and if more than one of the multiple Unit Owners are present either in person or by proxy, the Association may assume that any Unit Owner who casts the vote allocated to that Unit is entitled to do so unless one or more of the other Unit Owners of the Unit or their proxy promptly protests to the person presiding over the meeting. If such protest is made, the vote allocated to the Unit may only be cast by written instrument executed by all Unit Owners who are present at the meeting.

Section 8.2. Voting Rights and Meetings. Each Unit in the Condominium Project shall have one equal vote; provided, however, no vote allocated to a Unit owned by the Association may be cast. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Managers, or by Unit Owners having twenty percent (20%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than ten (10) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States Mail to the mailing address of each Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Managers.

Unless the Bylaws provide for a higher percentage, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Board of Managers are present, in person or by proxy, at the beginning of the meeting.

Section 8.3. Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Unit Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Board of Managers. A summary of the proposed budget approved by the Board of Managers shall be mailed to the Unit Owners within thirty (30) days after its adoption by the Board along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than sixty (60) days after mailing of the summary to the Unit Owners. Unless at the meeting a majority of all Unit Owners, rather than a majority of those present and voting in person or by proxy, reject the proposed budget, the budget is ratified whether or not a quorum is present. In the event the proposed budget is rejected, the budget last ratified by the Unit Owners continues until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Managers as provided above.

Section 8.4. Unit Owners' and Association's Addresses for Notices. All Unit Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Unit Owners for notices, demands, and all other communications regarding Association matters. The Unit Owner or the representative of the Unit Owners of a Unit shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Unit to such Unit Owner or Unit Owners. Such registration shall be in written form and signed by all of the Unit Owners of the Unit or by such persons as are authorized to represent the interests of all Unit Owners of the Unit. If no address is registered or if all of the Unit Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section. If the address of the Unit is the registered address of the Unit Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Unit Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Managers shall be sent to the following address or such other address as the Board of Managers may designate from time to time by notice to the Unit Owner(s):

Board of Managers  
Tenderfoot Lodge Condominium Association, Inc.  
c/o Alex Christopher & Co.  
201 Fillmore Street, Suite C  
Denver, Colorado 80206

Notices given in accordance with this Section may be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective upon deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the US mail.

Section 8.5. Transfer Information. All Purchasers of Unit(s) shall provide to the Association written notice of the Purchaser's name, address, unit owned, date of transfer, and name of the former Unit Owner within ten (10) days of the date of transfer. The Purchaser shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Units. The Association or Managing Agent shall have the right to charge the Purchaser a reasonable administrative fee for processing the transfer in the records of the Association.

Section 8.6. Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which a Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Managers. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation of the Association and shall terminate no later than the earlier of:

- (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than a Declarant;
- (b) two (2) years after Declarant's last conveyance of a Unit in the ordinary course of business; or
- (c) two (2) years after any right to add new Units was last exercised.

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

Section 8.7. Required Election of Unit Owners. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit owners other than a Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Managers shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Managers must be elected by Unit Owners other than the Declarant. Not later than the termination of any Period of Declarant Control, the Unit Owners shall elect a Board of Managers of at least three (3) members, at least a majority of whom shall be Unit Owners other than the Declarant or designated representatives of Unit Owners other than Declarant. The Board of Managers shall elect the officers. The members of the Board of Managers and officers shall take office upon election.

Section 8.8. Removal of Members of the Board of Managers. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice and an opportunity to be heard as required by this Declaration and the Act, the Unit Owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Board of Managers with or without cause, other than a member appointed by the Declarant.

Section 8.9. Requirements for Turnover of Declarant Control. Within sixty (60) days after the Unit Owners other than the Declarant elect a majority of the members of the Board of Managers, the Declarant shall deliver to the Association all property of the Unit Owners and of 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 Articles of Incorporation, 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. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;
- (c) The Association funds or control thereof;
- (d) All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;
- (e) A copy of any plans and specifications used in the construction of the Improvements which were completed within two (2) years before this Declaration was recorded;
- (f) All insurance policies then in force, in which the Unit Owners, the Association or its members of the Board of Managers and officers are named as insured persons;
- (g) Copies of any certificates of occupancy that may have been issued with respect to the Improvements;

- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments for Common Expenses from Unit Owners;
- (d) hire and discharge managing agents;
- (e) hire and discharge employees and agents, other than managing agents, attorneys, accountants and independent contractors;
- (f) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Association's Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium Project;
- (g) make contracts and incur liabilities;
- (h) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) cause additional improvements to be made as part of the Common Elements;
- (j) acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act;
- (k) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;
- (l) impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;
- (m) impose a reasonable charge for late payment of assessment, recover reasonable attorney fees and other legal costs for collection of assessment and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and hearing, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;
- (n) impose a reasonable charge for the preparation and recordation of amendments to this Declaration or for statement of unpaid Assessments;
- (o) provide for the indemnification of the Association's officers and Board of Managers and maintain Board of Managers' and officers' liability insurance;

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

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

(j) A roster of Unit owners and Eligible First Mortgagees and the addresses and telephone numbers, if known, as shown on the Declarant's records;

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

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

## ARTICLE 9. ASSOCIATION POWERS AND DUTIES

Section 9.1. Association Management Duties. Subject to the rights and obligations of Declarant and other Unit Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Condominium Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements and the Limited Common Elements, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, control, operation, maintenance, repair, replacement and improvement by the Association shall be part of the Assessments, and prior approval of the Unit Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired or replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Unit Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement in Section 10.2 of this Declaration that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Unit Owner and such Unit Owner's authorized agents.

Section 9.2. Association Powers. The Association shall have, subject to the limitations contained in this Declaration and the Act, the powers necessary for the administration of the affairs of the Association and the upkeep of the Condominium Project, which shall include, but not be limited to, the power to:

(a) adopt and amend Bylaws and Rules and Regulations;

(p) assign the Association's right to future income, including the right to receive Assessments;

(q) interpret, construe and enforce the terms of the Project Documents;

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

(s) exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

(t) exercise any other power necessary and proper for the governance and operation of the Association; and

(u) by resolution, establish committees of the Board of Managers and/or Unit Owners, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee.

Section 9.3. Actions by Board of Managers. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Managers may act in all instances on behalf of the Association; provided, however, the Board of Managers may not act on behalf of the Association to amend this Declaration, to terminate the Condominium Project or to elect members of the Board of Managers or determine the qualifications, powers and duties, or terms of office of members of the Board of Managers, but the Board of Managers may fill vacancies in its membership for the unexpired portion of any term.

Section 9.4. Board of Managers Meetings. All meetings of the Board of Managers or any committee thereof, will be open to the Unit Owners or their representatives, except that meetings of the Board of Managers or any committee thereof may be held in executive or closed door session(s) and may restrict attendance to the Board of Managers and such other persons requested by the Board of Managers during a regular or specially announced meeting or any part thereof. The matters to be discussed at a meeting held in executive or closed door session are limited to:

(a) Matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent or employee of the Association;

(b) Consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) Investigative proceeding concerning possible or actual criminal misconduct;

(d) Matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure; or

(e) Any matter of disclosure which would constitute an unwarranted invasion of individual privacy.

Prior to the time the Board of Managers or any committee thereof convene in executive or closed session, the chair of the body shall announce the general matter of discussion as enumerated above. No rule or regulation of the Board of Managers or any committee thereof shall be adopted during an executive or closed session. The minutes of all meetings at which an executive or closed session was held shall indicate that such a session was held and the general subject matter thereof.

Section 9.5. Right to Notice and Hearing. Whenever the Project Documents require that an action be taken after "notice and hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Managers, a committee, an officer, the Managing Agent) shall give notice of the proposed action to all Unit Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit Owner having a right to notice and hearing shall have the right to appeal to the Board of Managers from a decision of a proposing party other than the Board of Managers by filing a written notice of appeal with the Board of Managers within ten (10) days after being notified of the decision. The Board of Managers shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 9.6. Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from Purchasers at the time of the initial sale of each Unit by Declarant an amount equal to three (3) months worth of annual Assessments based on the Association's budget in effect at the time of the sale. Such payments to this fund shall not be considered advance payments of annual Assessments.



## ARTICLE 10. ASSESSMENTS

Section 10.1. Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses; provided, however, that the Association shall reimburse the Declarant for Common Expenses paid by it from the date that the Association is formed to the date of the initial Assessment (which amount shall be assessed to the Units, including Units owned by Declarant, as a Common Expense). After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually.

Section 10.2. Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Condominium Project including maintenance, repair and replacement of the Common Elements as required by the Act and the Project Documents, which shall be ratified by the Unit Owners in accordance with Section 8.3 of this Declaration. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be credited to the Unit Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses.

Section 10.3. Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion to their Allocated Interests in the Common Elements, as shown in Exhibit B, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties; (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Elements, which shall be assigned, equally or on such other equitable basis as the Board of Managers shall determine, to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof predominately or exclusively benefiting fewer than all of the Units, which shall be assessed against the Units benefited; (d) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to their contribution to the risk; (e) any Common Expense caused by the misconduct of any Unit Owner(s), which may be assessed equally or on such other equitable basis as the Board of Managers shall determine against such Unit Owner(s); and (f) any expenses which are charged equally to the Units. All such allocations of Common Expenses to Units on a basis other than the Units' Allocated Interest in the Common Elements shall be made at the sole discretion of the Board of Managers. Any billing for an installment of Assessments may indicate items that are specially allocated as set forth above or items that are included in the Assessment and allocated based on the Units' Allocated Interests in the Common Elements but would commonly be the separate expense of the Unit Owner, e.g., utility charges.

Section 10.4. Special Assessments. In addition to the annual Assessments authorized above, the Board of Managers may at any time and from time to time determine, levy, and assess, in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Managers may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair,

demolition, replacement, renovation or maintenance of the Condominium Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Unit pursuant to the provisions of Section 10.3 above. Any special Assessment shall be subject to the same requirement for review and approval by the Unit Owners as is the annual budget.

Section 10.5. Due Dates for Assessment Payments. Unless otherwise determined by the Board of Managers, the annual Assessments and any special Assessments which are to be paid in installments shall be paid in monthly installments, in advance, and shall be due and payable to the Association at its office or as the Board of Managers may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the first day of each month. If any such installment shall not be paid within thirty (30) days after it became due and payable, then the Board of Managers may assess a late charge, default interest charge, fee, or such other charge as the Board of Managers may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. Until established or changed by the Board of Managers, the default interest charge shall be made at the rate of twelve percent (12%) per annum. A Unit Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period.

Section 10.6. Default Assessments. All Costs of Enforcement assessed against a Unit Owner pursuant to the Project Documents, or any expense of the Association which is the obligation of a Unit Owner pursuant to the Project Documents shall become a default Assessment assessed against the Unit Owner's Unit. Notice of the amount and demand for payment of such default Assessment shall be sent to the Unit Owner prior to enforcing any remedies for non-payment hereunder.

Section 10.7. Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Unit Owners, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Unit Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Unit Owner's Unit. No Unit Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit.

Section 10.8. Lien for Assessments; Assignment of Rents. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of the Project Documents shall be burdens running with, and a perpetual lien in favor of the Association, upon the specific Unit to which such Assessments apply. The recording of this Declaration in the Records constitutes record notice of the lien, and no further recording of any claim of lien for assessments is required. To further evidence such lien upon a specific Unit, the Association may prepare a written lien notice setting forth the description of the Unit, the amount

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

Section 10.9. Remedies for Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until the date of payment; (b) the Association may accelerate and declare immediately due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred; (c) the Association may thereafter bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay the same; and (d) the Association may proceed to foreclose its lien against the particular Unit pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Colorado law for foreclosure of real estate mortgages. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against a Unit Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 10.10. Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Unit Owner to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, except for Purchasers who take a Unit free of the Association's lien for unpaid Assessments pursuant to Section 10.11, all Purchasers shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments against such Unit, without prejudice to any such Purchaser's right to recover from any prior Unit Owner any amounts paid thereon by such Purchaser. A Purchaser's obligation to pay Assessments shall commence upon the date the Purchaser becomes the Unit

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

Section 10.11. Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments.

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

(i) liens and encumbrances recorded before the recordation of the Declaration;

(ii) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

(iii) the lien of any First Mortgagee which was recorded before the date on which the Assessment sought to be enforced became delinquent; provided, however, that the Association's perpetual lien on a Unit for Assessments shall be superior to the lien of any First Mortgagee to the extent of an amount equal to the annual Assessments which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or the First Mortgagee of an action or nonjudicial foreclosure either to enforce or to extinguish the lien.

(b) Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any Purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such First Mortgagee acquires title to the Unit except to the extent that such unpaid amounts may be reallocated and assessed to all Units as a Common Expense and

except to the extent that the lien of the Association for unpaid Assessments has priority over the First Mortgage as provided in subparagraph (a)(iii) of this Section. Except as provided above in this Section, all other persons obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

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

Section 10.12. Statement of Status of Assessments. Upon fourteen (14) days written notice to the Managing Agent or Board of Managers and payment of a reasonable fee set from time to time by the Board of Managers, any Unit Owner, holder of a Security Interest, prospective Purchaser of a Unit or their designees shall be furnished a statement of the Unit Owner's account setting forth:

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

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

Section 10.13. Liens. Except for Assessment liens as provided for in this Declaration, mechanics' liens (except as prohibited by Declaration), tax liens, judgment liens and other liens validly arising by operation of law and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Unit Owner in

the Common Elements except a Security Interest in the Common Elements granted by the Association pursuant to the requirements of the Act.

## ARTICLE 11. MAINTENANCE RESPONSIBILITY

Section 11.1. Unit Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial Purchasers of the Units, and subject to limitations expressed in other portions of this Declaration including, but not limited to, Sections 13.4 and 13.5, each Unit Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Unit Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, the Association may enact reasonable Rules and Regulations governing any furnishing of or work on the interior of a Unit which is visible from the exterior of the Project or which may affect the transmission of noise, vibration or odor that might affect adjoining Units.

Section 11.2. Responsibility of the Unit Owner. The Unit Owner at the Unit Owner's expense shall maintain and keep in repair the interior of the Unit. All fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit shall be maintained and kept in repair by the Unit Owner of that Unit. A Unit Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Notwithstanding the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any balcony or of any other Limited Common Elements appurtenant to the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition.

Section 11.3. Unit Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Unit owner; and, if the Unit owner fails to repay the expenses incurred by the Association within seven days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 11.4. Responsibility of the Association. The Association, without the requirement of approval of the Unit Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Condominium Project not required in this Declaration to be maintained and kept in good repair by a Unit Owner or by Declarant.

## ARTICLE 12. MECHANICS' LIENS

Section 12.1. Mechanics' Liens. Subsequent to the recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Unit Owner or the Unit Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Unit Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners, the Association and the Declarant from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Unit Owner's Unit, against the Unit of another Unit Owner or against the Common Elements, or any part thereof.

Section 12.2. Enforcement by the Association. At its own initiative or upon the written request of any Unit Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of this Article by collecting from the Unit owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. If the Unit Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Unit Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Unit owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

## ARTICLE 13. USE RESTRICTIONS

Section 13.1. Use of Units. Except for uses reserved to Declarant in Article 15, all Units shall be used for dwelling and lodging purposes only. Unit Owners of the Units may rent or lease such Units to others for these purposes and may use these Units for home occupations which do not cause unreasonable disturbance to other Unit Owners and which are permitted by applicable zoning codes.

Section 13.2. Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Unit Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Unit Owner without the prior written approval of the Association.

Section 13.3. Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Condominium

Project or in an increase in the rate of the insurance on all or any part of the Condominium Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Condominium Project. No damage to or waste of the Common Elements shall be committed by any Unit Owner or Purchaser, and each Unit Owner shall indemnify and hold the Association and the other Unit owners harmless against all loss resulting from any such damage or waste caused by him, an Occupant of his Unit or a Purchaser. Failure to so indemnify shall be a default by such Unit Owner under this Section. At its own initiative or upon the written request of any Unit Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment levied against such Unit.

Section 13.4. Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit or to any Common Element shall be made or caused to be made by any Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and thereafter the Association. No window coverings or other improvements, alterations or decorations visible from outside a Unit shall be added or replaced by a Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and thereafter the Association. No alteration or subdivision of Units or relocation of boundaries between adjoining Units shall be made by the Unit owners without the prior written approval of the Declarant during the Period of Declarant Control and thereafter by the Association. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section. Such Rules and Regulations shall include, but shall not be limited to, requirements that the applicant submit plans and specifications showing the nature, kind, shape, height, color, materials and location of the proposed alterations in sufficient detail for the Association and Declarant to review them, and pay any processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. The Rules and Regulations shall specifically consider the impact of the alteration on the harmony of external design and location in relation to surrounding structures and topography.

Section 13.5. Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Unit Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Condominium Project by the Unit Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others. No charcoal grill, hibachi or similar appliance shall be used or kept in any Unit or on any Limited Common Element appurtenant thereto; provided, however, that the Association may adopt Rules and Regulations permitting and governing the use of natural gas or propane grills on decks. No animals, birds, insects, or livestock of any kind shall be raised, bred, or kept on or in the Condominium Project, except the Board of Managers may by Rule and



Regulation allow Unit Owners to keep a reasonable number of domesticated dogs, cats, or other household pets which do not unreasonably interfere with the use and enjoyment of the Condominium Project by others; provided, however, the foregoing shall not be construed to require the Board of Managers to allow Unit Owners to keep pets in the Condominium Project.

Section 13.6. Prohibition of Timesharing. No Unit Owner shall offer or sell any interest in its Unit under a "timesharing" or "interval ownership" plan, or any similar plan of ownership.

Section 13.7. Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected or maintained for any purpose whatsoever except such signs as have been approved by the Declarant during the Period of Declarant Control, and thereafter the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Condominium Project only with the prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association, which approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Declarant or the Association. Notwithstanding the foregoing, no signs advertising Units for sale or for rent may be displayed in windows of Units or on balconies or patios or in any other location on the Unit or on the common Elements, that is visible from the Common Elements or adjacent property.

#### ARTICLE 14. EASEMENTS

Section 14.1. Easement of Enjoyment. Every Unit Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every unit, subject to the easements set forth in this Article and the easements and restrictions set forth elsewhere in this Declaration.

Section 14.2. Delegation of Use. Any Unit Owner may delegate, in accordance with the Project Documents, the Unit Owner's right of enjoyment in the Common Elements to an Occupant of the Unit Owner's Unit.

Section 14.3. Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, and as shown on the recorded Map and as reserved or granted under this Declaration. The recording data for recorded easements and licenses appurtenant to or included in the Property or to which any part of the Property may become subject is set forth on the attached Exhibit C.

Section 14.4. Easements for Encroachments. The Condominium Project, and all portions of it, are subject to easements hereby created for encroachments between Units and the Common Elements as follows:

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

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

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

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

Section 14.5. Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Unit Owners, the Association and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant or the Board of Managers shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 14.7. Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common

Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.8. Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Unit Owners of other Units and the Association shall have the irrevocable right, to be exercised by the Association as the Unit Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of a Unit Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Unit Owners shall be a Common Expense.

Section 14.9. Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

#### ARTICLE 15. SPECIAL DECLARANT RIGHTS

Section 15.1. Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete improvements indicated on Plats and Maps filed with this Declaration.
- (b) Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Condominium Project and models within the designated Units and in the Common Elements. The number, size and location of sales offices, management offices and models shall be specified on the Map. Declarant shall have the right to relocate sales offices, management offices and models to comparable Units or areas in the Common Elements.
- (c) Control of Association and Board of Managers. The right to appoint or remove any officer of the Association or any member of the Board of Managers during the period of Declarant Control.
- (d) Signs. The right to maintain signs on the Common Elements advertising the Condominium Project and the availability of Units for sale.

(e) Dedications. The right from time to time to establish, by dedication or otherwise, and to vacate utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Condominium Project and/or other Real Estate owned by Declarant.

(f) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Condominium Project for the benefit of the Unit Owners and/or the Association and/or other Real Estate owned by Declarant.

(g) Easement Rights. The rights to an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations arising under this Declaration or the Act and/or for the benefit of other Real Estate owned by Declarant.

(h) Other Rights. The right to exercise any additional Reserved Rights created by any other provision of this Declaration.

Section 15.2. Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Rights may be exercised by the Declarant anywhere on the Property or within the Improvements so long as the Declarant owns any Unit or holds a Security Interest in any Unit(s), whichever eventuality grants to Declarant the longest possible period for exercise of Special Declarant Rights, but in no event for a period longer than seven (7) years from the date that this Declaration is recorded.

Section 15.3. Interference with Special Declarant Rights. Neither the Association nor any Unit Owners may take any action or adopt any Rule and/or Regulation that will interfere with or diminish any Special Declarant Rights without the prior written consent of the Declarant. In the event any controversy, dispute or litigation involving exercise of the reserved Special Declarant Rights by Declarant, this Declaration shall be interpreted so as to give the Declarant the broadest, most flexible Special Declarant Rights allowed by the Act.

Section 15.4. Rights Transferable. Any Special Declarant Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 16. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS

Section 16.1. Reservation. Except as provided in this Article, Declarant does not reserve the right to expand the Property; create units, common elements or limited common

elements within the Project; subdivide Units or convert Units into Common Elements; or withdraw real estate from the Property (collectively referred to as "Development Rights").

Section 16.2. Correction of Errors. Notwithstanding the foregoing, for a period of seven (7) years from the date of recording this Declaration, Declarant reserves the right to exercise any Development Right to correct errors in the Project Documents; provided, however, that no such rights shall be exercised in a manner that would materially impair the rights of the Unit Owners as a body or of any First Mortgagee without the prior written consent of the Association or the affected First Mortgagee(s), as appropriate.

Section 16.3. No Waiver. The provisions of this Article shall not waive or limit the rights of Declarant (as the Owner of a Unit) to change the boundaries of or subdivide a Unit in the same manner as other Unit Owners are permitted to do pursuant to this Declaration and the Act.

Section 16.4. Supplement to the Map. Declarant shall, contemporaneously with the Amendment of this Declaration, file a Supplement to the Map showing the location of the Additional Improvements constructed on the Expansion Property or the construction, combination, subdivision, conversion or allocation of Units or Common Elements allowed by this Article. The Supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 16.5. Transfer of Expansion and Development Rights. Any Development Rights created or reserved under this Article for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 17. INSURANCE

Section 17.1. Coverage. Commencing not later than the first conveyance of a Unit to a Purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Managers determines that any insurance described herein will not be maintained, the Board of Managers shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible First Mortgagees at their respective last known addresses. All premiums for insurance obtained by the Association pursuant to this Article and other expenses of obtaining such insurance shall be Common Expenses.

(a) Property Insurance. The Association shall maintain property insurance on the Common Elements for broad form covered causes of loss in amounts not less than the full insurable replacement cost of the insured property less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies and also

exclusive of the finished interior surfaces of the walls, floors, and ceilings of the Units and any improvements or betterments installed by the Unit Owners in their Units.

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

(c) **Fidelity Insurance.** The Association shall maintain fidelity insurance in an amount not less than two (2) months current Assessments plus reserves as calculated from the current budget of the Association on all persons who control or disburse funds of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent must obtain and maintain fidelity insurance in like amount for the benefit of the Association unless the Association names such person as an insured employee in the policy of fidelity insurance specified above.

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

(e) **Unit Owners' Policies.** Each Unit Owner may obtain additional insurance at his own cost for his own benefit so long as all such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Unit Owner.

Section 17.2. Required Provisions. All insurance policies carried pursuant to the requirements of this Article must provide that:

(a) each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

(b) the insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;

(c) no act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(d) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the risks covered by the policy, the Association's policy provides primary insurance:

(e) any loss covered by the policies must be adjusted with the Association;

(f) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;

(g) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Unit Owner or holder of a Security Interest; and

(h) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and any Unit Owner(s) to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 17.3. Adjustment of Claims. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

## ARTICLE 18. RESTORATION UPON DAMAGE OR DESTRUCTION

Section 18.1. Duty to Restore. Any portion of the Condominium Project for which insurance is required under the Act or for which insurance carried by the Association is in effect that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) the Condominium Project is terminated;

(b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;

(c) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

(d) prior to the conveyance of any Unit to a Purchaser, the holder of a Security Interest on the damaged portion of the Condominium Project rightfully demands all or a substantial part of the insurance proceeds.

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

Section 18.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 18.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Managers and a majority of Unit Owners.

Section 18.4. Replacement of Less Than Entire Property. If the entire Condominium Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium Project and, except to the extent that other persons will be distributees:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Unit Owner of the Unit and the Unit Owner of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed to each Unit Owner or holders of Security Interests, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 18.5. Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Managers, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of Security Interests as their interest may appear. Subject to the provisions of Sections 18.1 and 18.4 above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored or the Condominium Project is terminated, in which event the surplus proceeds will be distributed as provided in Sections 18.1 and 18.4 above.



Section 18.6. Certificates by the Board of Managers. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Managers:

(a) whether or not damaged or destroyed Property is to be repaired or restored; and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 18.7. Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or holders of Security Interests, the Board of Managers, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Unit Owners and the holders of Security Interests.

Section 18.8. Right of First Refusal. In the event of a sale of the Real Estate constituting the Condominium Project allowed or required by subparagraphs (a), (b) or (c) of Section 18.1 above or in the event of a sale by the holder of a Security Interest pursuant to subparagraph (d) of Section 18.1 above, the Association or the holder of the Security Interest receiving a bona fide offer for the purchase of the Real Estate shall give prompt written notice to Declarant of such offer, the name and address of the proposed purchaser, a copy of the offer and such other information on the proposed transaction as Declarant may reasonably request. Declarant shall then have the right to purchase the Real Estate on the same terms and conditions as contained in such bona fide offer except that the Declarant shall have not less than thirty (30) days to evaluate whether or not to exercise this right of first refusal, and any purchase offer for the Real Estate shall specifically provide that period of time to the Declarant or the sale of the Real Estate shall not be made free and clear of this right of first refusal. Declarant, within said thirty (30)-day period, shall notify the Association or the holder of the Security Interest of its intention to exercise the right to purchase the Real Estate. If Declarant does not give notice of its intent to exercise this right of first refusal within said thirty (30)-day period, then the Association or the holder of the Security Interest shall be free to accept the bona fide offer and sell the Real Estate free and clear of this right of first refusal.

## ARTICLE 19. CONDEMNATION

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

## ARTICLE 20. MORTGAGEE PROTECTIONS

Section 20.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in

substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 20.2. Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of First Mortgagees is required, it shall mean the approval or consent of sixty-seven percent (67%) of First Mortgagees. Each First Mortgagee shall be entitled to one vote for each Security Interest held by such First Mortgagee. First Mortgagees holding a Security Interest in more than one Unit shall have one vote for each encumbered Unit.

Section 20.3. Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by a Unit Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

Section 20.4. Consent Required. The Association may not take any of the following actions without the prior consent of sixty-seven percent (67%) of the First Mortgagees:

- (a) conveyance or encumbrance of the Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Condominium Project, or as otherwise provided for in this Declaration will not be deemed a transfer within the meaning of this clause);
- (b) restoration or repair of the Condominium Project after hazard damage or partial condemnation in a manner other than that specified in this Declaration;
- (c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;

(d) merger of the Condominium Project with any other common interest community; or

(e) any action not to repair or replace the Common Elements except as permitted in this Declaration.

Section 20.5. Additional Consent Requirements. Except as provided by the Act, in the case of condemnation or loss of substantially all of the Units and/or Common Elements of the Project, without the consent of the First Mortgagees or the affirmative vote of at least two-thirds (2/3) of the Unit Owners (other than Declarant) the Association shall not:

(a) by act or omission seek to abandon or terminate the Project;

(b) change the pro rata interest or obligations of any Unit in order to levy assessments or charges, 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 public purposes consistent with the intended use of the Common Elements by the Project is not a transfer within the meaning of this clause; or

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

Section 20.6. Notice of Objection. Unless a First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 20.7. First Mortgagees' Rights.

(a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association to the extent that such payments were the responsibility of the Association pursuant to this Declaration.

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

Section 20.8. Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

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

(b) prevent the Association or Board of Managers from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article 18 of this Declaration.

Section 20.9. Special Declarant Rights. No provision or requirement of this Article entitled "Mortgagee Protections" shall apply to or impair any Special Declarant Rights or Development Rights reserved to Declarant in this Declaration.

## ARTICLE 21. DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 21.1. Term. This Declaration and any amendments or supplements to it shall remain in effect from the date of recordation for a period of fifty (50) years. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each, unless otherwise terminated or modified as provided in this Article.

Section 21.2. Amendment of Declaration. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, this Declaration (including the Map) may be amended only by a vote or agreement of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 21.3. Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (a) any Unit Owners desiring an amendment as provided for in this Declaration or the Act; (b) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; and (c) in all other cases by the Association as a Common Expense.

Section 21.4. When Modifications Permitted. Notwithstanding the provisions of the Section above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 21.5. Recording of Amendments. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Unit Owners, if any, and required consents of First Mortgagees and/or Eligible First Mortgagee, as applicable, were obtained and are on file in the office of the Association. The amendment shall be indexed in the Grantee's Index in the name of the Condominium Project and the Association and in the Grantor's Index in the name of each person or entity executing the amendment.

Section 21.6. Termination of the Condominium Project. The Condominium Project may only be terminated as provided in the Act.

## ARTICLE 22. MISCELLANEOUS

Section 22.1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Project Documents shall be through any proceedings at law or in equity brought by any aggrieved Unit Owner, the Association, or Declarant against the Association or any Unit Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 22.2. Nonwaiver. Failure by Declarant, the Association, or any Unit Owner, Occupant or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Project Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.3. Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.4. Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.5. Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.