

**DECLARATION
OF CONDOMINIUM FOR
SOLARADO TOWNHOMES**

_____, 20__

County of Summit

State of Colorado

IMPORTANT NOTICE TO BUYERS:

THIS DOCUMENT IS SUBJECT TO REVISION AND MODIFICATION BY DECLARANT AT ANY TIME PRIOR TO THE CLOSING DATE ON THE PURCHASE OF YOUR UNIT. IF DECLARANT ELECTS TO MATERIALLY REVISE OR MODIFY THIS DOCUMENT AT ANY TIME PRIOR TO THE CLOSING DATE ON THE PURCHASE OF YOUR UNIT IN A MANNER THAT DIRECTLY IMPACTS YOUR UNIT, DECLARANT WILL PROVIDE YOU WITH A COPY OF THE REVISED DOCUMENT.

Upon recordation, return to:
J. Christopher Kinsman, Esq.
Fairfield and Woods, P.C.
1700 Lincoln Street, Suite 2400
Denver, Colorado 80203

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**DECLARATION OF CONDOMINIUM
FOR
SOLARADO TOWNHOMES**

THIS DECLARATION OF CONDOMINIUM FOR SOLARADO TOWNHOMES ("Declaration") is made as of the date set forth below on the signature page hereto by Solarado Housing, LLC, a South Dakota limited liability company ("Declarant").

RECITALS

- A. Declarant is owner of that certain real property located in the Town of Silverthorne, County of Summit, State of Colorado, more particularly described on the attached **Exhibit A** ("Property").
- B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act, as set forth in Colorado Revised Statute § 38-33.3-101 *et seq.* ("Act"), as amended from time to time, on the Property, the name of which is Solarado Townhomes.

**ARTICLE 1
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act, in order to create a condominium.

**ARTICLE 2
DEFINITIONS**

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

- Section 2.1 "Affordable Housing Covenant" means that certain Residential Housing Restrictive Covenant and Notice of Lien recorded coincident with the recordation of this Declaration in the real estate records of the County of Summit. The Affordable Housing Covenant shall place certain resale and occupancy restrictions on the Units as set forth and identified in the Affordable Housing Covenant.
- Section 2.2 "Agency" means any agency or corporation such as the U.S. Department of Housing and Urban Development ("HUD"), U.S. Veterans' Administration ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home

Loan Mortgage Corporation (“FHLMC”) that purchases or insures residential mortgages.

Section 2.3 “Allocated Interests” means the undivided interest in the Common Elements and Common Expenses and the votes in the Association that are allocated to each of the Units in the Project. The formulas used to establish the Allocated Interests are as follows:

(a) *Common Elements and Common Expense Assessments.* The undivided interests in the Common Elements and all Common Expenses shall be allocated to the Units on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units then within the Project.

In the event that Declarant exercises its right to enlarge the Project by submitting to the Project additional real property in accordance with Article 15 below, the Allocated Interests set forth above will be reallocated by Declarant in accordance with the above.

(b) *Votes.* Owners shall be entitled to one (1) vote for each Unit owned within the Project.

Section 2.4 “Articles” means the Amended Articles of Incorporation for Solarado Townhomes Homeowner Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.5 “Assessments” means the Annual Assessments, Special Assessments and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.6 “Association” means the Solarado Townhomes Homeowner Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 “Association Documents” means this Declaration, the Articles, the Bylaws, the Map, any Alteration Guidelines (as defined in Article 16 below), and any budget, procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 “Board” means the governing body of the Association.

Section 2.9 “Building(s)” means any building constructed on the Property containing the Units. A Building is further described in Section 3.5 below.

Section 2.10 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

- Section 2.11 “Ceiling” means the interior surface of the ceiling of a Unit.
- Section 2.12 “Clerk and Recorder” means the office of the Clerk and Recorder in the County of Summit, State of Colorado.
- Section 2.13 “Common Elements” means all portions of the Project except the Units. The Common Elements are owned or otherwise held in common by the Owners in undivided interests according to the Allocated Interests set forth pursuant to Section 2.3 above and consist of General Common Elements and Limited Common Elements.
- 2.13.1 “General Common Elements” means all tangible physical properties of, and other appurtenant interests associated with, this Project, except the Limited Common Elements and the Units.
- 2.13.2 “Limited Common Elements” means those interests in the Common Elements which are either limited to or reserved in this Declaration, on a Map, in a recorded instrument executed by Declarant pursuant to Article 15 hereof, or by authorized action of the Association, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one but fewer than all Owners. Notwithstanding the foregoing, an LCE Parking Space and/or LCE Storage Space (as both are defined below) shall be allocated to a Unit either (a) by designation on the Map, or (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit in accordance with Section 15.2 below.
- Section 2.14 “Common Expenses” means (a) all expenses expressly declared to be common expenses by this Declaration or the Bylaws, (b) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements, (c) insurance premiums for the insurance carried under Article 10 below, and (d) all expenses lawfully determined to be Common Expenses by the Board.
- Section 2.15 “County” means the County of Summit, State of Colorado.
- Section 2.16 “Declarant” means Ptarmigan Housing, LLC, a South Dakota limited liability company, and any of its successors or assigns who have received an assignment of Declarant’s rights pursuant to the Act.
- Section 2.17 “Declaration” means this Declaration and the Map, and amendments and supplements to the foregoing.
- Section 2.18 “Eligible Mortgagee” means a holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit encumbered by its First Mortgage, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

- Section 2.19 “Exterior Walls” means the walls bounding a Unit on all sides.
- Section 2.20 “First Mortgage” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- Section 2.21 “First Mortgagee” means any Person named as a Mortgagee in any First Mortgage.
- Section 2.22 “LCE Parking Space” means a parking space depicted and numbered on the Map that has been allocated for exclusive use to one or more, but fewer than all, of the Units in the Project. An LCE Parking Space shall be allocated to a Unit either (a) by designation on the Map, or (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit in accordance with Section 15.2 below.
- Section 2.23 “LCE Storage Space” means a storage space depicted and numbered on the map that has been allocated for exclusive use to one or more, but fewer than all, of the Units in the Project. An LCE Storage Space shall be allocated to a Unit either (a) by designation on the Map, or (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit in accordance with Section 15.2 below.
- Section 2.24 “Manager” means a Person engaged by the Association to perform certain duties, powers or functions of the Association, to the extent the Board may authorize from time to time.
- Section 2.25 “Map” means the condominium map of the Project prepared in accordance with the Act and recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration, and any supplements and amendments thereto.
- Section 2.26 “Member” means every Person that holds membership in the Association by virtue of ownership of a Unit.
- Section 2.27 “Mortgage” means any mortgage, deed of trust or other document conveying any Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.
- Section 2.28 “Mortgagee” means any Person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such Person under such Mortgage.
- Section 2.29 “Owner” means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

- Section 2.30 “Owner’s Agent” means members of the Owner’s family, or the Owner’s agent, employee, invitee, licensee or tenant.
- Section 2.31 “Person(s)” means any natural person or any legal association of persons including, but not limited to, partnerships, limited partnerships, corporations, limited liability entities or associations recognized under Colorado law.
- Section 2.32 “Project” means the condominium common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.
- Section 2.33 “Successor Declarant” means (a) any Person to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder, and (b) any Mortgagee holding a Mortgage encumbering that portion of the Project owned by Declarant at such time as said Mortgagee shall gain title to said portion of the Project through foreclosure or deed in lieu of foreclosure.
- Section 2.34 “Supplemental Declaration” means an instrument that amends this Declaration in accordance with the amendment provisions herein or under the Act if not otherwise provided herein.
- Section 2.35 “Supplemental Map” means a supplemental Map of the Project that depicts any change in the Project through a Supplemental Declaration, or which otherwise corrects or amends the Map in accordance with the Act.
- Section 2.36 “Unit” means, with respect to enclosed units intended for dwelling, one individual airspace unit and the interior surface of the Exterior Walls. The lower boundary for each Unit is the exterior surface of the lowest level of the Unit extending to the inside of the Exterior Walls of the Unit. The upper boundary for each Unit is the interior surface of the Ceiling of the highest level of the Unit. Each Unit also includes the airspace contained within the Exterior Walls, windows, doors and unfinished surfaces of Exterior Walls, as shown on the Map. The Units are further described in Section 3.5 below.

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

ARTICLE 3
NAME, DIVISION INTO UNITS; DESCRIPTION

Section 3.1 Name.

The name of the Project is the Solarado Townhomes. The Project is a condominium pursuant to the Act.

Section 3.2 Association.

The name of the Association is Solarado Townhomes Homeowner Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units.

The Project shall initially consist of eight (8) Units. In accordance with Declarant's rights to expand this condominium regime, the Project may consist of a maximum of ten (10) units. Subject to the Affordable Housing Covenant, each Unit shall consist of the ownership interest in the Unit as defined in this Declaration and an undivided ownership interest in the Common Elements as defined in this Declaration.

Section 3.4 Identification of Units.

The identification number and street address of each Unit is shown on the Map. Each Unit is further described on the Map.

Section 3.5 Description of Units; Building(s); Inseparability; Transfer.

3.5.1 *Description.* The provisions of § 202 of the Act, entitled "Unit Boundaries," are generally applicable to the Units. The Unit Boundaries are generally shown on the Map, and are generally enclosed and bounded by the following boundaries:

(a) All lath, wallboard, plasterboard, 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.

(b) 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 only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a General Common Element.

(c) Subject to the provisions of Section 3.5.1 (b) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

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

3.5.2 *Building(s)*. All portions of a Building, excluding the Units and the Limited Common Elements allocated (on the Map or pursuant to this Declaration) to fewer than all Units in a Building, are General Common Elements.

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

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

UNIT NO. _____, SOLARADO TOWNHOMES, County of Summit, State of Colorado, according to the Condominium Map thereof recorded on _____, 20____, at Reception No. _____, and the Declaration of Condominium for Solarado Townhomes, recorded on _____, 20____, at Reception No. _____, both in the records of the Clerk and Recorder of the County of Summit, Colorado, as amended from time to time.

3.5.5 *Contracts Entered Into Prior to Recording of Condominium Map and Declaration*. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Map and/or this Declaration with the Clerk and Recorder may legally describe such Unit in the manner set forth in Section 3.5.4 above and/or may indicate that the Map and/or this Declaration are to be recorded. Upon recordation of the Map and this Declaration with the Clerk and Recorder, such description shall be conclusively presumed to describe the corresponding Unit shown on the Map and such Unit shall be subject in all respects to this Declaration.

Section 3.6 Affordable Housing Covenant.

Notwithstanding any provision in this Declaration to the contrary, the terms and conditions set forth in the Affordable Housing Covenant shall control. Notwithstanding any provision in this Declaration to the contrary, any lien of the Association granted, created or established by this Declaration or by law is hereby made subject and subordinate to the Affordable Housing Covenant. Upon the written request of the Town of Silverthorne or Summit Combined Housing Authority ("SCHA"), the Association shall execute and deliver any certificate or other instrument that the Town of Silverthorne or SCHA may reasonably request to

confirm such subordination. This Section shall not be amended except with the written consent of the Town of Silverthorne and SCHA.

ARTICLE 4 USE RESTRICTIONS

Section 4.1 Home Office.

Each Owner shall be entitled to the exclusive ownership and possession of their Unit. Each Unit shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in any Unit except as hereinafter expressly provided. The foregoing shall not, however, be construed in such a manner as to prohibit an Owner from: (a) maintaining their personal professional library in a Unit; (b) keeping their personal business or professional records or accounts in a Unit; (c) handling their personal business or professional telephone calls or correspondence from a Unit; (d) maintaining a computer or other office equipment within a Unit; or (e) utilizing administrative help or meeting with business or professional associates, clients, or customers in a Unit. Any accessory business use of a Unit, permitted by this Section 4.1, must be in compliance with all applicable statutes, ordinances and governmental regulations, must not have any adverse impact on the Association (including, but not limited to, unreasonable use of the Common Elements and insurance concerns) and must be conducted in accordance with this Declaration, the Bylaws, and any rules and regulations of the Association. Subject to Declarant's reserved rights herein, the Board may establish and enforce additional reasonable rules and regulations related to the conduct of business and other activities within the Project premises, including the Units.

Section 4.2 Leasing.

Subject to the Affordable Housing Covenant, an Owner shall have the right to lease their Unit in its entirety upon such terms and conditions as the Owner may deem advisable; *provided, however*, that (a) no leases shall be made for less than a three-month period (excepting a hold-over month-to-month tenancy following the expiration of a lease term), (b) all leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Bylaws and any rules and regulations of the Association, (c) a Unit may be leased only for the uses provided hereinabove, and (d) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association, whether or not the lease contains such a provision. The Board may adopt further rules regarding the leasing the Units that are not inconsistent with the terms of this Declaration or the Affordable Housing Covenant.

Section 4.3 Pets.

No household pet or animal shall be allowed in or about the Project, including the Common Elements, at any time without close supervision by an Owner. The Board may prohibit

keeping within a Unit certain breeds or kinds of dogs, cats and birds, and other pets, restrict the size of such pets, and impose conditions and restrictions upon keeping such pets, based upon a specific determination that such type or size of pet or that more than one of a particular type of pet may constitute a safety concern or nuisance to other Owners. Owners shall be responsible for strict compliance with all laws and any rules or regulations adopted from time to time by the Board related to pet ownership, including any regulation wholly excluding or limiting the number or type of pets allowed, and shall ensure their pet does not interfere with other Owners' quiet use and enjoyment of the Project. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s), as well as any costs incurred by the Association as a result of such pet(s), and any such amounts shall be and constitute a Default Assessment subject to and enforceable by the Association in accordance with this Declaration.

Section 4.4 Structures.

Except as hereinafter provided and except as reserved by Declarant hereunder: (a) no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, enclosure or outbuilding, shall be placed or erected upon or within any Unit or within the Common Elements, (b) no Unit shall be occupied in any manner at any time prior to being fully completed, and (c) no Unit when completed shall be in any manner occupied until made to comply with all requirements, conditions, and restrictions set forth herein. However, during the actual construction, alteration, repair or remodeling of a Unit, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work, subject to the prior written approval of the Board as to the storage situs and method. The work of constructing, altering or remodeling any Unit shall be prosecuted diligently from the commencement thereof until completion.

Section 4.5 Miscellaneous.

4.5.1 No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit other than an appropriate identifying number, except to the extent the foregoing is in conflict with applicable law, except for rights reserved by Declarant hereunder, and except as approved by the Board.

4.5.2 No clotheslines, dog runs, drying yards, service yards, woodpiles or storage areas (except as depicted on the Map) shall be so located on any Unit or on the Common Elements, including balconies, as to be visible from a street, from any other Unit, or from the General Common Elements unless approved by the Board.

4.5.3 Absent Board approval, all types of refrigerating, cooling, or heating apparatus shall be concealed within the Unit and in no event may such an apparatus be placed upon the Common Elements, except for a single cooling condenser serving each Unit, and except as originally constructed by Declarant.

4.5.4 Absent Board approval, no wind generators of any kind shall be constructed, installed, erected or maintained within the Project.

4.5.5 A vehicle may be parked on the Property only if such vehicle is on functioning wheels and completely fits within and is kept within the boundaries of an authorized parking space. The foregoing restriction shall not restrict trucks or other commercial vehicles within the Property that are necessary for the construction or for the maintenance of the Common Elements, Units or any improvements located thereon.

4.5.6 Except as hereinabove provided, no abandoned or inoperable passenger cars or other vehicles of any kind shall be stored or parked within the Project. An "abandoned or inoperable vehicle" shall be defined by the Board by adoption of rules and regulations for the Association.

4.5.7 The Board is authorized to adopt rules, regulations and policies setting forth additional restrictions on the parking and storage of vehicles within the Project, the storage of materials within the Project, and the performance of work and placement of vehicles within the LCE Parking Spaces and/or the LCE Storage Spaces. LCE Parking Spaces and/or LCE Storage Spaces can only be leased to Owners, Unit tenants and the Association; *provided, however*, that this limitation on leasing shall not apply to the Declarant.

4.5.8 The Association is authorized to adopt rules, regulations and policies setting forth additional restrictions on the use of parking and storage spaces, and the use of the Common Elements.

4.5.9 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted within the Project.

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 5.1 The Association.

Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit, except as provided in Section 5.2 below.

Section 5.2 Transfer of Membership.

Except as provided in the Affordable Housing Covenant, or approved by the Association and in order to meet Agency requirements, an Owner shall not transfer, pledge or alienate their membership in the Association in any way, except upon the sale or encumbrance of their Unit and then only to the purchaser or Mortgagee of their Unit. The Association shall not

create a right of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right, subject to the terms of the Affordable Housing Covenant.

Section 5.3 Membership and Voting.

The Association shall have one class of membership consisting of all Owners, including Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.3 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents. Notwithstanding the number of Owners of record for any particular Unit, each Unit is entitled to one vote as further described in Section 2.3 above. Votes cannot be fractionally divided.

Section 5.4 Declarant Control.

Declarant shall be entitled to appoint and remove the members of the Board and the officers of the Association during the period of Declarant Control. "Declarant Control" begins six months prior to the recording of this Declaration. The period of Declarant Control of the Association shall terminate upon the first to occur of: (a) sixty days after conveyance by Declarant of seventy-five percent of the total number of Units that may be created in the Project to Owners other than a Declarant; (b) two years after the last conveyance of a Unit by a Declarant in the ordinary course of business; or (c) two years after any right to add new Units was last exercised by a Declarant. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant Control, but, in that event, Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Notwithstanding the period of Declarant Control, not later than sixty days after conveyance by Declarant of twenty-five percent of the total number of Units that may be created in the Project to Owners other than Declarant, at least one member and not less than twenty-five percent of the members of the Board will be elected by Owners other than a Declarant, and not later than sixty days after conveyance by Declarant of fifty percent of the total number of Units that may be created in the Project to Owners other than a Declarant, not less than thirty-three and one-third percent of the members of the Board will be elected by Owners other than a Declarant. Not later than the termination of the period of Declarant Control as provided above, the Owners (including Declarant) shall elect a Board of at least three members, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than a Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty days after the Owners other than a Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in §303(9) of the Act.

Section 5.5 Books and Records.

The Association shall make available to Owners and to Mortgagees for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

Section 5.6 Manager.

The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws. The Manager shall not have the authority to make expenditures except as directed by the Board.

Section 5.7 Rights of Action.

The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. The Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this Section 5.7, the Association or any Owner shall have the right, but not the obligation, to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 5.8 Implied Rights and Obligations.

The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

Section 5.9 Notice.

Except as set forth in Section 11.7 below, a notice to the Association or the Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the

Association, or to such other address as the Board may designate by written notice to all Owners and to all holders of security interests in the Units who have notified the Association that they hold a security interest in a Unit. Except as otherwise provided herein, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association. All notices to holders of security interests in the Units shall be sent, except where a different manner of notice is specified elsewhere in the Association Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

ARTICLE 6 POWERS OF THE BOARD OF THE ASSOCIATION

Except as provided in the Bylaws, the Act and the Affordable Housing Covenant and subject to Declarant's reserved rights herein, the Board may act in all instances on behalf of the Association to:

- Section 6.1 Adopt and amend rules and regulations regarding the use and enjoyment of the Common Elements and reasonable restrictions on the use of the Units;
- Section 6.2 Adopt and amend budgets for revenues, expenditures and Assessments, subject to Section 11.2 below;
- Section 6.3 Hire and terminate Managers and other employees, agents and independent contractors;
- Section 6.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;
- Section 6.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days written notice unless a shorter notice period is mutually agreed to by the parties to the contract;
- Section 6.6 Regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- Section 6.7 Cause additional improvements to be made as part of the Common Elements;
- Section 6.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if: (a) Members entitled to cast at least sixty-seven percent of the votes agree to that action; (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees; and (c) all

Owners to which any Limited Common Element is allocated agree to convey that Limited Common Element or subject it to a security interest;

- Section 6.9 Grant easements, leases, licenses and concessions through or over the Common Elements;
- Section 6.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;
- Section 6.11 Impose charges for the late payment of Assessments, recover reasonable attorneys' fees and other legal costs for the collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- Section 6.12 Impose reasonable charges for the preparation and recordation of amendments to this Declaration or for statements of unpaid Assessments;
- Section 6.13 Provide for the indemnification of its officers and the Board and maintain directors' and officers' liability insurance;
- Section 6.14 Assign its right to future income, including the right to receive Assessments;
- Section 6.15 Enter into use and maintenance agreements with adjacent landowners for the use and maintenance of such landowners property;
- Section 6.16 Exercise any other powers conferred by the Declaration or Bylaws;
- Section 6.17 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- Section 6.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE 7 MECHANIC'S LIENS

Section 7.1 No Liability.

If any Owner shall cause any material to be furnished to their Unit, or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to their Unit.

Section 7.2 Indemnification.

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

Section 7.3 Association Action.

Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be affected against a Unit.

**ARTICLE 8
EASEMENTS**

Section 8.1 Recorded Easements.

The Property shall be subject to all easements as shown on the Map or any plat, those of record, those provided in the Act (including easements for encroachment set forth in § 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article 8. In addition, pursuant to § 205(m) of the Act, the recording data for certain recorded easements and licenses to which the Project is or may become subject to are identified on the attached **Exhibit B**.

Section 8.2 Declarant's Rights Incident to Construction.

Declarant, for itself and its successors and assigns, the Association and/or for Owners, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any development and sale of the Units or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; *provided, however*, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 8.3 Utility Easements.

There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements, the Units, and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units and the Common Elements which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations which shall not be unreasonably withheld.

Section 8.4 Reservation of Easements, Exceptions and Exclusions.

The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restrictions on the use of such Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 8.5 Emergency Access Easement.

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

Section 8.6 Support Easements.

Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

Section 8.7 Easements for Encroachments.

If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement shall extend for whatever period of time the encroachment exists. Such easements for

encroachments shall not be considered to be encumbrances either on the Common Elements or a Unit. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of the Building(s), by error on the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof or by any other movement of any portion of the improvements located within the Project.

Section 8.8 Easement for Affordable Housing Covenant.

A general easement is hereby granted to the SCHA, its successors and assigns, to enter upon the Property, Common Elements and Units to administer, monitor, enforce and maintain all provisions of the Affordable Housing Covenant.

**ARTICLE 9
MAINTENANCE**

Section 9.1 Maintenance by Owners.

Each Owner shall maintain and keep in repair their Unit, including the fixtures therein, to the extent current repair shall be necessary in order to avoid damaging other Owners' property. All fixtures and equipment installed within a Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall maintain free from clutter and debris Limited Common Elements allocated to their Unit, including without limitation, decks and LCE Parking Spaces. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of their Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting to the Exterior Walls, Ceilings and floors, including doors, windows and screens. The Association reserves the right to assign further maintenance responsibility to an Owner for certain areas of each Unit and of other Limited Common Elements allocated to the Owner, and such Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

Section 9.2 Owner's Failure to Maintain or Repair.

In the event that a Unit (including its allocated Limited Common Elements, and other property assigned to the Owner of such Unit for maintenance pursuant to Section 9.1 above) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the property lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed property for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board (after a determination by the Board that the condition of such Unit [or other property] negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit (or other property) to perform such

work as is reasonably required to restore the Unit (or other property) to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for unpaid Assessments levied in accordance with Article 11 of this Declaration.

Section 9.3 Maintenance by Association.

9.3.1 The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth pursuant to Section 9.1 above and unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's Agent as set forth in Section 9.4 below), which shall be a Common Expense of all Owners; *provided, however*, that the Board may determine, in its discretion, that the cost of maintenance and repair of Limited Common Elements undertaken by the Association shall be an expense of the Owner(s) allocated the Limited Common Elements so maintained or repaired.

9.3.2 Except as provided in Section 9.1 above, Association maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, gates, signage, irrigation systems, perimeter fencing, Building fire system, Building security system, common utility facilities (including water and sewer), Buildings (excluding the Units), LCE Parking Spaces, LCE Storage Spaces, sidewalks, driveways, trails within the Project, Common Element halls, and other improvements located in the Common Elements. In the event the Association does not maintain or repair the Common Elements within thirty days after a written demand by Declarant, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. If Declarant elects to conduct any maintenance or repair work on behalf of the Association, Declarant shall bill the Association for the costs of the work conducted, providing documentation of the charges incurred. The Association shall reimburse Declarant for the maintenance or repair within fifteen days of the Association's receipt of Declarant's invoice.

Section 9.4 Association Maintenance as Common Expense.

Except as otherwise provided herein, the cost of maintenance and repair by the Association shall be a Common Expense of all Owners, to be shared by each Owner according to the Allocated Interests therefor set forth pursuant to Section 2.3. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense of all Owners. However, if such damage is caused by the negligent or tortious acts of an Owner or Owner's Agent, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that such Owner's or Owner's Agent's negligence or intentional conduct caused such damage, which costs must be timely paid.

Section 9.5 Easement for Maintenance.

Each Owner and the Association shall have the irrevocable right, to be exercised only by the Manager, the Board or officers or employees of the Association unless otherwise delegated in writing by the Association, to have access to each Unit from time to time during reasonable hours on reasonable notice as may be necessary for the maintenance, repair or replacement of any of the Common Elements, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article 10 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

**ARTICLE 10
INSURANCE**

Section 10.1 General Insurance Provisions.

Not later than the time of the first conveyance of a Unit by Declarant to a purchaser, the Association shall acquire and pay for, out of the Assessments levied under Article 11 below, the following insurance policies carried with reputable insurance companies authorized to do business and licensed to provide insurance in Colorado:

10.1.1 *Property Insurance Coverage.* Property insurance, with extended coverage, including boiler and machinery, fire, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), special condominium, building ordinance and inflation guard endorsements (when they can be obtained), in amounts determined by the Board to represent not less than the full then current insurable replacement cost of the Common Elements, *and including* all fixtures, interior and Exterior Walls and floors, partitions, decorated and finished surfaces of interior and Exterior Walls, floors, and Ceilings, doors, windows and other elements or materials which comprise a part of the Units as originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, including FNMA and FHLMC, *and including* any fixtures, equipment or other property within the Units when originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, including FNMA and FHLMC, *but excluding* any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant) and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Board; *provided, however*, that if any Agency requires specific deductibles, the Board shall follow such Agency's requirements. The Association shall obtain insurance covering the specifications of each Unit as originally sold by Declarant to an Owner. Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to their Unit that increase the replacement value of their Unit (after the transfer of title to the Unit by Declarant). In the event that satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall

not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 below in the event the Association pays such premium for an Owner. Subject to Section 10.2 below, such property insurance policy must be written by an insurance carrier that has an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition, or such other insurance carrier approved by the Board and acceptable to applicable Agencies.

10.1.2 *Comprehensive Liability.* Comprehensive general public liability and property damage insurance in such amounts as the Board deems desirable, provided that such coverage shall be for at least One Million and No/100 Dollars for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of the Common Elements including a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Denver metropolitan area including automobile liability insurance, if appropriate. The Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Board that such party has current satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

Section 10.2 Form.

The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in a Unit and in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Allocated Interests for the Unit that the Mortgage encumbers. SCHA shall be an additional insured under the Association Property insurance policy. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Section 10.3 Owners' Insurance.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's

replacement value above that of the specifications for the Unit as originally sold by Declarant to an Owner, casualty and public liability insurance coverage for each Unit and the work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. Each Owner shall carry an HO-6 Insurance Policy.

Section 10.4 Certificates of Insurance; Cancellation.

Certificates of insurance shall be issued by the Association to each Owner, Mortgagee and SCHA upon written request to the Association. All policies required to be carried under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the Association's insurance described in Article 10 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all Eligible Mortgagees.

Section 10.5 Insurance Proceeds.

Any loss covered by the property insurance policy described in Section 10.1 above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners, SCHA and Mortgagees as their interests may appear. Subject to the provisions of Section 10.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, SCHA and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.6 Insurer Obligation.

An insurer that has issued an insurance policy for the insurance described in Section 10.1, Section 10.9 and Section 10.10 hereof, or its agent, shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee and to SCHA. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of any other Mortgage, and to SCHA.

Section 10.7 Repair and Replacement.

Any portion of the Common Elements for which insurance is required under this Article 10 which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained from Owners holding at least sixty-seven percent of the vote in the Association, and Declarant during the period of Declarant Control (as set forth in Section 5.4 above);

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

10.7.3 There is a vote not to rebuild by (a) Owners holding at least sixty-seven percent of the vote of the Association, (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, and (c) Declarant during the period of Declarant Control (as set forth in Section 5.4 hereof); or

10.7.4 Prior to the conveyance of any Unit to a Person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of the Common Elements in excess of insurance proceeds and reserves is a Common Expense, except as otherwise determined by the Board. If all of the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other Persons will be distributees, the insurance proceeds must be distributed to all Owners or Mortgagees, as their interests may appear in proportion to each Unit's Allocated Interests.

Section 10.8 Common Expenses.

Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses; *provided, however*, that if the Association's property and extended coverage insurance covers Limited Common Elements, fixtures, equipment or other property within or associated with some but not all of the Units (as required by any Agency including FNMA or FHLMC), or other insurance attributable to some but not all of the Units, the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Association.

Section 10.9 Fidelity Insurance.

Fidelity insurance or fidelity bonds may be maintained by the Association to protect against acts and inaction on the part of its officers, directors, trustees and employees, and on the part of all others, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount determined by the Board.

Section 10.10 Workers' Compensation Insurance.

The Board shall obtain Workers' Compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance.

The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of one hundred percent of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Association shall also maintain Directors' and Officers' insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of the Board and its officers against any liability asserted against a member of the Board or an officer of the Association or incurred by him or her in his or her capacity of or arising out of his or her status as a member of the Board or an officer of the Association. The Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by an Agency.

**ARTICLE 11
ASSESSMENTS**

Section 11.1 Obligation.

Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association all (a) Annual Assessments, (b) Special Assessments, and (c) Default Assessments described below.

Section 11.2 Budget.

The Board shall adopt a budget for revenues, expenditures and reserves for the Project and shall submit the budget to ratification of the Owners as provided herein no less frequently than annually. The Board shall levy and assess the Annual Assessments in accordance with the annual budget. Within ninety days after the adoption of a proposed annual budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the

summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the annual budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

Section 11.3 Annual Assessments.

11.3.1 Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all Owners, subject to Section 11.2 above. Estimated Common Expenses shall include, the cost of routine maintenance and operation of the Common Elements, including, but not limited to, that portion of real property taxes, if any, attributable to the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, any fees and costs payable in common by all Owners to the SCHA under the Affordable Housing Covenant, landscaping of the General Common Elements, care of grounds and trails within the General Common Elements, routine repairs, renovations and upkeep within the Common Elements, LCE Parking Spaces, LCE Storage Spaces, wages, water, sewer service and common utility charges, snow and trash removal, recycling charges, upkeep of the Common Element halls (if any), legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous Assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

11.3.2 Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month beginning no later than the second calendar month following the first sale of a Unit by Declarant; *provided, however*, that the Association may, with the consent of Owners holding a majority of the vote present at any meeting at which a quorum is present, designate any other installment period. The omission or failure of the Association to fix the Annual Assessments for any Assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

11.3.3 Charges for water, sewer, storm drainage and other utility services provided to or for the Units and/or the Common Elements may be billed to the Association ("Service Charges"). If any Service Charges are billed to the Association, the Association shall pay the same on or before the date they become due. In addition to the Annual Assessments provided for above, the Association shall, as and when determined by the Board in its discretion, apportion to and collect from each Owner an amount which, with all other Service Charges for such period, is sufficient to pay or reimburse the Association for all Service Charges for such period; *provided, however*, that the Association may elect to assess any or all of the Service Charges as part of the Annual Assessments. The manner in which Service Charges are apportioned shall be determined by the Board in its discretion from time to time; by way of example, and not as a limitation, the Service Charges may be assessed uniformly, based on actual

usage by one or more Units, or based on Allocated Interests. Non-payment of any Service Charges shall be subject to enforcement and collection by the Association in the same manner as Assessments. In the event that any of the Service Charges are billed directly to an Owner, such Owner shall pay the same on or before the due date thereof.

Section 11.4 Apportionment of Annual Assessments.

The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment; *provided, however,* that to the extent that any Common Expenses or a portion thereof benefit fewer than all Units, such expenses may be assessed exclusively against the Units benefited in accordance with § 315(3)(b) of the Act. The Association reserves the right to allocate all expenses relating to fewer than all Units (such as those expenses attributable to utilities, Services Charges (see Section 11.3.3 above), Limited Common Elements, and insurance premiums described in Section 10.8 above) to the Owners of those affected Units only.

Section 11.5 Special Assessments.

In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section 11.5 shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units (a) any extraordinary maintenance, repair or restoration work on fewer than all of the Units or Limited Common Elements, (b) any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or Limited Common Elements, or (c) by virtue of the negligent or intentional actions of a particular Owner or Owner's Agents. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owner(s), and no payment shall be due less than ten days after such notice shall have been given.

Section 11.6 Default Assessments.

All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment. Notice in writing of the amount of such Default Assessment and the time for payment of the Default Assessment shall be given promptly to the Owner(s), and no payment shall be due less than ten days after such notice shall have been given. If payment is not made on or before the date set forth in such written notice, the Default Assessment shall become a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in

this Declaration.

Section 11.7 Effect of Nonpayment; Assessment Lien.

Any Assessment installment, whether pertaining to any Annual Assessment, Special Assessment or Default Assessment, which is not paid on or before five days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (b) Assess an interest charge from the due date at the yearly rate of six (6) percentage points above the prime rate charged by the Association's bank, or such other lawful rate as the Board may establish, not to exceed the maximum rate allowable under applicable state usury laws;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year or other predetermined assessment period shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vi) Proceed with foreclosure as set forth in more detail below.

Subject to Section 17.1 below, Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In addition, if any Owner fails to timely pay Assessments or any money or sums due to the Association, the Association may require reimbursement for collection costs and reasonable attorneys' fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding. This Section 11.7 is subject to the rights of Mortgagees set forth in Section 17.1 below.

The current address for purposes of foreclosure notification pursuant to the Act is

[insert property manager address and SCHA address].

Section 11.8 Personal Obligation.

Each Assessment against a Unit is the personal obligation of the Person(s) who owned the Unit at the time the Assessment became due and shall also pass to successors in title. *By acceptance of a deed for a Unit, each Unit purchaser thereby consents to assume the foregoing joint obligation for all Assessments due against the Unit pursuant to this Section 11.8.* No Owner may exempt themselves from liability for any Assessment by abandonment of their Unit, or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. This Section 11.8 is subject to the rights of Mortgagees set forth in Section 17.1 below.

Section 11.9 Payment by Mortgagees.

Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 11.10 Statement of Status of Assessment Payment.

Upon payment of a reasonable fee set from time to time by the Board and upon written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen calendar days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 11.11 Capitalization of the Association.

The Association shall establish an initial working capital fund equal to two-twelfths of the estimated Annual Assessments for Common Expenses for each Unit subject to the terms of this Declaration. The working capital fund may be used by the Association for emergencies, insurance deductibles in the event of casualty or other loss, capital expenditures for repair or replacement of the Common Elements, and such other expenses which do not occur on a regular and ongoing basis, as may be determined by a majority of the Board. The initial working capital fund shall be established upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser. Upon acquisition of record title to a Unit from Declarant, each such new Owner shall contribute to the working capital fund of the Association an amount equal to two-twelfths of the Annual Assessment determined by the Board for that Unit for the year in which the new Owner acquired title. Such payments shall not be considered advance

payments of Annual Assessments. The working capital fund deposit made by such new Owner shall be non-refundable. IN THE EVENT THAT DECLARANT MAKES PAYMENT OF ANY WORKING CAPITAL ON BEHALF OF ANY UNIT, SUCH AMOUNT SHALL BE REIMBURSEABLE TO DECLARANT BY THE UNIT PURCHASER AT THE CLOSING OF THE SALE OF THE UNIT BY DECLARANT TO SUCH PURCHASER. The working capital fund must be maintained by the Association in a segregated account, and may not be used by Declarant to defray any of its expenses, reserve contributions, or construction costs.

Section 11.12 Maintenance Accounts; Accounting.

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

ARTICLE 12
DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Board.

Except as provided in Section 10.7 above, in the event of damage to or destruction of all or part of any Common Element, improvement, or other property covered by insurance written in the name of the Association under Article 10 hereof, the Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "Association-Insured Property").

Section 12.2 Estimate of Damages or Destruction.

As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the provisions of Section 10.7 above apply and approval is obtained by a fifty-one percent vote of Eligible Mortgagees (which percentage is measured by the vote allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Board or the insurance trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction.

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

Section 12.4 Funds for Repair and Reconstruction.

The proceeds received by the Association from any property insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5 above, levy, assess and collect from the Owners without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in accordance with the Units' Allocated Interests, first to the Mortgagees and then to the Owners, as their interests appear.

**ARTICLE 13
CONDEMNATION**

Section 13.1 Rights of Owners.

Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain, or whenever all or any part of the Common Elements are conveyed in lieu of a taking under threat of condemnation by the Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or

conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction.

The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

Unless within sixty days after such taking, Declarant and/or Owners who combined represent at least sixty-seven percent of the vote in the Association and fifty-one percent of Eligible Mortgagees shall otherwise agree, if the taking involves a portion of the Common Elements on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Units according to the relative value of each Unit which shall be in accordance with each Unit's Allocated Interests, first to the Mortgagees and then to the Owners, as their interests appear.

Section 13.3 Complete Condemnation.

If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall be deemed to be terminated thereby, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.5 above.

ARTICLE 14
ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of: (a) granting easements pursuant to Article 8 above; (b) purchasing and maintaining insurance pursuant to Article 10 above, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 above upon their damage or destruction as provided in Article 12 above; or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 13 above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying a portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association

shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 15 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Notwithstanding any provision in this Declaration to the contrary, the rights reserved to Declarant in this Article 15 may be exercised by Declarant without the consent of the Association, Owners, Mortgagees or any other persons.

Section 15.1 Reservation of Subdivision and Combination Rights.

Pursuant to the Act, Declarant reserves the right for itself and any Successor Declarant to subdivide or convert a Unit that it owns into additional Units, Common Elements or a combination of same, and to combine Units that it owns. Declarant may subdivide a Unit that it owns by recording a Supplemental Map and a Supplemental Declaration. If Declarant subdivides any Unit, whether or not any part of the Unit is converted into common elements (as defined in §102 of the Act), the Supplemental Declaration shall reallocate all the Allocated Interests of the Unit among the units created by the subdivision in any reasonable manner. Upon subdivision or conversion of any such Unit, Declarant may convey the additional units and/or common elements for consideration.

Section 15.2 Create Common Elements, Parking Spaces and Storage Spaces /Allocate Limited Common Elements.

15.2.1 Declarant reserves the right (but shall have no obligation) for itself and any Successor Declarant to construct and create additional Common Elements. Declarant may prepare, execute and record a Supplemental Map or Declaration that identifies the Common Element.

15.2.2 DECLARANT FURTHER RESERVES THE RIGHT TO CONVERT ANY AND ALL PARKING SPACES AND/OR STORAGE SPACES, WITHIN THE PROJECT THAT ARE GENERAL COMMON ELEMENTS TO LIMITED COMMON ELEMENTS AND TO ALLOCATE EACH SO CONVERTED PARKING SPACE AND/OR STORAGE SPACE TO A PARTICULAR UNIT(S), AND TO RECEIVE CONSIDERATION FOR SUCH ALLOCATION. THIS MAY BE ACHIEVED EITHER (A) BY DECLARANT RECORDING A SUPPLEMENTAL MAP, SUPPLEMENTAL DECLARATION OR OTHER RECORDED DOCUMENT ALLOCATING THE CONVERTED PARKING SPACE AND/OR STORAGE SPACE TO A PARTICULAR UNIT(S), OR (B) BY DECLARANT ALLOCATING A PARKING SPACE AND/OR STORAGE SPACE TO A UNIT AS A LIMITED COMMON ELEMENT IN THE DEED CONVEYING THE UNIT FROM DECLARANT TO THE UNIT PURCHASER. WHEN THE DECLARANT UNDERTAKES THE LATTER APPROACH, THE DECLARANT SHALL, FROM TIME TO TIME, PREPARE, EXECUTE AND RECORD A SUPPLEMENTAL MAP OR SUPPLEMENTAL

DECLARATION IDENTIFYING THE MANNER IN WHICH ALL LCE PARKING SPACES AND LCE STORAGE SPACES HAVE BEEN ALLOCATED.

15.2.3 Declarant further reserves the right to reallocate LCE Parking Spaces and LCE Storage Spaces (by correction deed, by recording a Supplemental Map or Supplemental Declaration or by such other reasonable method) in its discretion and with the consent of the Owners allocated the affected LCE Parking Spaces and/or LCE Storage Spaces, without the consent of other Owners, the Association or Mortgagees, and notwithstanding the procedures set forth in § 208 of the Act.

Section 15.3 Constructing and Adding Additional Units, Common Elements and Land to the Condominium Regime.

15.3.1 Declarant reserves the right to add additional real estate to the Project (and create Units and Common Elements thereon) from such locations as Declarant may elect in its sole discretion, so long as the total additional real estate so annexed to the Project pursuant to this sentence does not exceed ten percent of the total area described on the attached Exhibit A. Declarant may exercise this right, without the necessity of the consent thereto or the joinder therein by the Owners, the Association, Mortgagees or any other persons, by recording a Supplemental Map and a Supplemental Declaration annexing the additional property and adding any of the Units and Common Elements.

15.3.2 Such expansion must be accomplished by the filing for record by Declarant with the Clerk and Recorder a supplement to this Declaration containing a legal description of any new Units and a reallocation of Allocated Interests as applicable (as described in Section 15.5 below), together with a Supplemental Map depicting the new Common Elements and the Units created thereby. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion so long as each subsequent phase is contiguous to the real property already subject to this Declaration.

15.3.3 All future improvements will be consistent with the initial improvements in structure type and quality of construction and must be substantially completed prior to being brought into the condominium regime.

15.3.4 In the event of such expansion, the definitions used in this Declaration shall be expanded automatically. For example, "Unit" shall mean the Units described above plus any additional Units added by a Supplemental Declaration, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the condominium regime as expanded, without additional references to the Supplemental Declaration and the Supplemental Map.

15.3.5 An Owner at the time of their purchase of a Unit that has been brought into the condominium regime by a Supplemental Declaration shall be a Member of the Association. Such Owner shall be entitled to the same voting privileges as those Owners of the initial property brought into the condominium regime through the original Declaration and shall be subject to the same Assessments. The Assessments for that phase shall commence for all

Owners within that phase, including Declarant, upon the recording of the Supplemental Declaration and Supplemental Map for that phase.

15.3.6 The Supplemental Declaration recorded at the time of expansion shall set forth the new Allocated Interests and the new Common Expense Liability of the existing Units, and the newly added Units.

15.3.7 For all purposes hereof, each phase of the condominium regime after the recording of the Supplemental Map and Supplemental Declaration submitting each phase to the condominium regime, shall be treated as a part of the condominium regime developed as a whole from the beginning, except to the extent expressly otherwise provided for herein. It is the express purpose hereof to provide that from and after the date of the submission of a phase of the condominium regime in accordance with the provisions above, that such phase shall be treated as though such phase had been owned and occupied by the Owners thereof as a single undivided condominium regime.

Section 15.4 Other Reserved Rights.

15.4.1 Declarant reserves the right for itself and any successor Declarant: (a) to complete improvements indicated on any plats and Maps for the Project; (b) to maintain and relocate sales offices, management offices, design centers, signs and lighting, model units, storage areas, and construction yards within one or more Units and within the Common Elements, in such locations and in such forms as determined by Declarant in its discretion, and for such period of time as permitted hereunder (any model unit or sales/management office located in a Unit as designated on the Map shall be a Unit and not a Common Element); (c) to appoint or remove any officer of the Association or any member of the Board during the period of Declarant Control as set forth in Section 5.4 above; (d) to create storage spaces within the Project as General Common Elements, Limited Common Elements, or as storage condominium units for sale to Owners; (e) to amend the Declaration and/or the Map in connection with the exercise of any Declarant rights hereunder or pursuant to the Act; (f) TO SUBJECT ANY OR ALL OF THE UNITS TO AN AFFORDABLE HOUSING COVENANT THAT LIMITS THE OCCUPANCY AND RESALE OF THE UNIT(S) TO PRESERVE AFFORDABILITY AS REQUESTED BY THE TOWN OF SILVERTHORNE; and (G) to use and to permit others to use easements through the Common Elements as may be reasonably necessary for construction within the Project, and for the purpose of discharging Declarant's obligations and rights under the Act and this Declaration.

15.4.2 Declarant also reserves any development rights created by any administrative, judicial or legislative action, including, but not limited to, any changes in zoning regulations or rules, changes in bulk plane limitations or any other rules or regulations adopted by any entity of the State or federal government that establishes development rights to property in addition to those currently existing for any defined Unit or the Project as a whole. Declarant shall be free to convey, transfer or sell its retained development rights subject to the terms of this Declaration.

15.4.3 Declarant reserves the rights to enter into easements benefiting the Project and to grant easements over and upon the Common Elements of the Project in order to further the development and operation of the Project.

Section 15.5 Change in Allocated Interests.

In the event Declarant or a Successor Declarant exercises the right to add, subdivide, combine or convert Units or Common Elements as set forth above, the Allocated Interests of the Units after such addition, withdrawal or subdivision shall be according to the formula set forth in Section 2.3 above, and Declarant may record an amendment to this Declaration to reflect these changes in accordance with the Act.

Section 15.6 Parking/Storage Assignments.

Declarant reserves the right to assign from time to time any and all parking and/or storage at the Project that is not specifically allocated as LCE Parking Spaces and/or LCE Storage Spaces to Units not owned by Declarant, for use by tenants of Units owned by Declarant.

Section 15.7 Termination of Rights.

Unless otherwise provided herein or required by the Act, the rights reserved to Declarant for itself, its successors and assigns in this Article 15 shall expire upon the earlier of (a) the sale or other transfer of the last Unit that may be created by Declarant (see Section 3.3 above), or (b) seven years from the recording of this Declaration with the Clerk and Recorder, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE 16
ARCHITECTURAL CONTROL AND DESIGN REVIEW

Section 16.1 Alterations.

Except for the rights reserved to Declarant in this Declaration and/or in the Act, no alteration or additions to the Common Elements of any kind shall be made unless first approved in writing by the Board, including, without limitation, structural, textural and color changes to walls, doors, windows and balconies. The Board shall exercise reasonable judgment to insure that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Board has the absolute right to deny any requested changes that the Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

Section 16.2 Architectural Review.

The Board may establish and administer Alteration Guidelines ("Alteration

Guidelines”) to carry out the purposes and intent of this Declaration. The Board may seek the advice of design professionals or other professionals if the need should arise. The Board may adopt, establish, and publish from time to time the Alteration Guidelines for the Project and such Alteration Guidelines shall be an Association Document, the terms of which shall be complied with by all Owners. The Alteration Guidelines, if any, shall not be inconsistent with this Declaration or the Affordable Housing Covenant, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, window coverings, antennae, landscaping and site improvement standards. The Alteration Guidelines, if created, may be modified or amended from time to time by majority approval of the Board and shall be made available to all Owners and their representatives for review. Further, in the event Alteration Guidelines are created, the Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project’s design review process and design standards is not a substitute for compliance with applicable town or County building, zoning, and subdivision regulations and requirements in the Affordable Housing Covenant and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Alteration Guidelines, the terms of this Declaration shall control.

Section 16.3 Requirement for Approval.

Except for Declarant’s reserved rights as herein described or as provided in the Act, no improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Common Elements, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Common Elements until plans and specifications with respect thereto satisfactory to the Board showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Board have been submitted to and approved in writing by the Board. All improvements shall be constructed only in accordance with approved plans. If the Board has not responded to an Owner’s request for approval within sixty days of submission by the Owner of all information requested by the Board, then such Owner’s request shall be deemed approved by the Board. Non-structural improvements and alterations that are completely within an existing Unit may be undertaken without such approval, by and at the cost of the Owner. All such improvements shall be insured by and at the cost of the Owner. An Owner undertaking such improvements shall indemnify the Association and the other Owners against any and all costs or damages attributable to the construction or existence of such improvements.

Section 16.4 Violation.

The Association, upon the unanimous approval by the Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in

connection with such removal. Failure to timely reimburse the Association shall be deemed a Default Assessment with payment thereof subject to the provisions of Article 11.6 above.

Section 16.5 Criteria for Approval.

The Board shall approve any proposed improvement only if it deems in its reasonable discretion that: (a) the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; (b) the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and (c) the upkeep and maintenance of the proposed improvement will not become a burden on the Association, and (d) the improvements are in conformance with the Affordable Housing Covenant. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, easements and utilities, and such other information as may be requested by the Board have been submitted to and approved in writing by the Board.

Section 16.6 Fees.

An Owner seeking architectural review approval shall promptly pay to the Association any fees set by the Board in connection with the review process, and shall reimburse the Association for all of its costs relating to review and on-going monitoring of construction, including the costs of staff and independent consultant review and assistance, as determined by the Association. The Association may assess these fees and costs against the Owner as a Default Assessment in the event the Owner fails to timely pay these fees and costs.

Section 16.7 Exemption for Declarant.

Until the completion of construction of all Units that may be created hereunder (see Section 3.3 above) and any and all Common Elements, Declarant shall be exempt from the provisions of this Article 16.

**ARTICLE 17
MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers or guarantors of any Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article 17 apply to this Declaration and also to the Articles, Bylaws and rules and regulations of the Association.

Section 17.1 Title Taken by Mortgagee.

Any Mortgagee holding any Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments

which become due and payable after the date title to the Unit is acquired. In addition, the Association's lien is superior to the Mortgage to the extent allowed by § 316 of the Act.

Section 17.2 Distribution of Insurance or Condemnation Proceeds.

In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other Person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a Mortgage against a Unit.

Section 17.3 Right to Pay Taxes and Charges.

Mortgagees who hold Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 17.4 Audited Financial Statement.

Upon written request from any Agency or First Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish an audited financial statement of the Association for the immediately preceding fiscal year. The financial statement must be available within one hundred-twenty days after the end of the Association's fiscal year.

Section 17.5 Notice of Action.

Eligible Mortgagees will be entitled to timely written notice of:

17.5.1 Except with respect to rights reserved to Declarant pursuant to Article 15 above, any amendment set forth in Section 18.2 below requiring Eligible Mortgagee approval;

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

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

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

17.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 10 above.

Section 17.6 Action by Mortgagee.

If this Declaration or any Association Documents require the approval of any Eligible Mortgagees then, the Association shall send a dated, written notice and a copy of any proposed amendment by certified or registered mail "return receipt" requested to such Eligible Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. In addition, the Association shall cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the City and County of Denver, State of Colorado. An Eligible Mortgagee that does not deliver to the Association a negative response within sixty days after the date of the notice shall be deemed to have approved the proposed amendment.

ARTICLE 18
DURATION OF COVENANTS AND AMENDMENT

Section 18.1 Term.

The covenants and restrictions of this Declaration shall run with and bind the Project in perpetuity, subject to the termination provisions of the Act. Except as otherwise provided herein, the consent of (a) Owners holding at least sixty-seven percent of the vote in the Association, (b) sixty-seven percent of Eligible Mortgagees (which percentage is measured by the vote allocated to such Units), (c) the SCHA, and (d) Declarant during the period of Declarant Control (as set forth in Section 5.5 above) and for so long as Declarant retains any Development Rights and/or Special Declarant Rights, as defined in the Act, shall be required to terminate this condominium regime.

Section 18.2 Amendment.

Except for amendments otherwise permitted to be undertaken by Declarant hereunder or pursuant to the Act, this Declaration, or any provision of it, may be amended at any time by: (a) Owners holding more than sixty-seven percent of the vote in the Association; (b) Declarant for so long as Declarant retains any Development Rights and/or Special Declarant Rights as defined in the Act; (c) the SCHA; and (d) if the amendment to the Association Documents adds or deletes any material provisions which establish provide for, govern or regulate any of the following, the approval of fifty-one percent of Eligible Mortgagees (which percentage is measured by the votes allocated to such Units):

18.2.1 Voting (sixty-seven percent Owner vote required);

18.2.2 Assessments, Assessment liens or subordination of such liens;

18.2.3 Reserves for maintenance or repair and replacement of the Common Elements;

18.2.4 Insurance or fidelity bonds;

18.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements (sixty-seven percent Owner vote required);

18.2.6 Responsibility for maintenance and repair of the Project;

18.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;

18.2.8 Boundaries of any Unit (sixty-seven percent Owner vote required);

18.2.9 The interests in the Common Elements (sixty-seven percent Owner vote required);

18.2.10 Convertibility of Units into Common Elements or of Common Elements into Units;

18.2.11 Imposition of any restrictions on the leasing of Units;

18.2.12 Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey their Unit;

18.2.13 Establishment of self-management by the Association where professional management has been required by any Agency;

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

18.2.15 Hazard or fidelity insurance requirements; and

18.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 18.3 Amendment Procedure.

Except for amendments otherwise permitted to be undertaken by Declarant hererunder or pursuant to the Act, any amendment must be executed by the president of the Association and recorded with the Clerk and Recorder and approval of such amendment may be shown by attaching a certificate of the secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners to the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Map to the fullest extent permitted under the Act and this Declaration, including, without limitation:

18.3.1 Declarant may amend the Declaration, a plat or a Map to correct clerical errors, typographical errors, or technical errors;

18.3.2 Declarant may amend the Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets and Agencies; and

18.3.3 Declarant may amend this Declaration as provided in Article 15 above.

ARTICLE 19 LIMIT ON TIMESHARING

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

ARTICLE 20 MANDATORY DISPUTE RESOLUTION

Section 20.1 Statement of Clarification.

Without modifying or restricting the scope of this Article 20 and as a statement of clarification only, nothing contained in this Article 20 is intended to prevent parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a “Claim” as defined below, that the Mandatory Dispute Resolution provisions contained in this Article 20 are activated.

Section 20.2 Alternative Method for Resolving Disputes.

Declarant, the Association, its officers and directors; all Owners; design professionals; builders, including any of their subcontractors and suppliers; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article 20 (each of the foregoing entities being referred to as a “Party”), agree to encourage the amicable resolution of disputes involving the Project and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article 20 and not to a court of law.

Section 20.3 Claims.

Except as specifically excluded in Section 20.4 below, all claims, disputes and other controversies arising out of or relating to:

- (a) Any Purchase and Sale Agreement between Declarant and any Owner (except as may be expressly provided otherwise therein);
- (b) The Property (as defined in any such Purchase and Sale Agreement) or the Unit;
- (c) The purchase of the Property or the Unit;

- (d) The interpretation, application or enforcement of this Declaration;
- (e) The soils of any property that lies within the Project;
- (f) The land development, design, construction, and/or alteration of any improvements within the Project and/or any alleged defect therein;
- (g) Any rights, obligations and duties of any Party under this Declaration;
- (h) Any personal injury or property damage that any Owner alleges to have sustained on the property;
- (i) Except as provided in Section 20.4 below, any Limited Warranty (as defined below) agreement between Declarant or any builder of Units, and any Owner or the Association; or
- (j) Any breach of any of the foregoing;

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this Article 20 and not in a court of law. Notwithstanding the foregoing, no Claim may be asserted or brought unless there is either (i) actual physical damage to or actual loss of use of tangible real or personal property or (ii) bodily injury or wrongful death.

Section 20.4 Claims Subject to Approval.

Unless Owners to whom at least sixty-seven percent of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article 20:

- (a) Any suit by the Association against any Party to enforce the provisions of Article 11 (Assessments);
- (b) Any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article 16 (Architectural Control and Design Review) or Article 4 (Use Restrictions);
- (c) Any suit by an Owner to challenge the actions of Declarant, the Association, Declarant acting to enforce the Alteration Guidelines, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Article 16 (Architectural Control and Design Review);

(d) Any suit between or among Owners, that does not include Declarant or the Association; and

(e) Where any Limited Warranty agreement provided to an Owner provides for any other method for resolving disputes relating to the Limited Warranty.

Section 20.5 Notice of Claim.

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

(a) The nature of the Claim, including a list of any alleged construction defects, the Persons involved and Respondent's role in the Claim;

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

(c) The date on which the Claim first arose;

(d) The name and address of every Person, including, without limitation, any current or former employees of Respondent, whom Claimant believes does or may have information relating to the Claim; and

(e) The specific relief and/or proposed remedy sought.

Section 20.6 Timely Initiation.

All Claims shall be initiated by Claimant within a reasonable time after the Claim has arisen, and no later than two years after the Claim arises.

Section 20.7 Right to be Heard.

Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any mediation or arbitration, Respondent shall have the right to make a written response and be heard by Claimant, affected Owners, and the Association in an effort to resolve the Claim.

Section 20.8 Right to Inspect and Repair.

If the Claim is based on the land development, design, construction and/or alteration of any improvements, Units or Common Elements within the condominium regime then, upon reasonable notice to any affected Owners (or the Association if the affected area is owned by the Association), Respondent shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including, but not limited to, any investigative or destructive testing.

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

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

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

(b) Minimize any disruption or inconvenience to any Person who occupies the Affected Property;

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

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

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Affected Property that were damaged, removed or destroyed by Inspecting Party.

In the event Inspecting Party wishes to make repairs to resolve the subject matter of the Claim, Inspecting Party shall have the right, at its option, to do so and to enter the Affected Property at a reasonable time(s) and upon reasonable notice for such purpose.

Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect and/or repair to accrue against or attach to the Affected Property. Inspecting Party shall indemnify, defend and hold harmless the affected Owners, or the Association if the Affected Property is owned by the Association, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and reasonable attorneys' fees, resulting from any breach of this Article 20 by Inspecting Party.

Section 20.9 Good Faith Negotiations.

The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants (at such Party's cost) to assist such Party in negotiations and to attend meetings.

Section 20.10 Mediation.

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

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

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

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

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

(f) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article 20 and any Party thereafter fails to abide by the terms of such agreement, then any other affected Party may file suit to enforce such agreement without the need to again comply with the procedures set forth in this Article 20. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, reasonable attorneys' fees and court costs.

Section 20.11 Arbitration.

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

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

(c) Within sixty days after submission of the Claim, Claimant shall file with the arbitrator and deliver to Respondent(s) a certified list of construction defects, if any, that are the subject of the Claim, which list shall be signed by the attorney for Claimant, or if Claimant does not have an attorney, by Claimant, and shall include:

(i) a statement that (1) the attorney for Claimant, or Claimant if Claimant does not have an attorney, has consulted with a Person not a Party to the Claim with expertise in the area of each construction defect that is the subject of the Claim ("Construction Consultant") and (2) Construction Consultant has inspected the improvements for which the construction defects are claimed, has reviewed the known facts, including such records, documents and other materials Construction Consultant has found to be relevant to the construction defects, and has concluded that the Claim has substantial justification based on Construction Consultant's inspection and review of the known facts;

(ii) a certification that Construction Consultant can demonstrate by competent evidence that, as a result of training, education, knowledge and experience, Construction Consultant is competent to testify as an expert and render an opinion as to the alleged construction defects;

(iii) a certification signed by Construction Consultant stating (1) such Person's name, address, qualifications and credentials that render him or her competent to express an expert opinion as to the alleged construction defect, (2) that he or she has inspected each improvement and reviewed the known facts, including such records, documents and other materials which he or she has found to be relevant to the construction defects at issue, and (3) as to each improvement for which a construction defect Claim is asserted, an identification of the owner of the improvement, the location and date of construction of the improvement, and an identification of each claimed construction defect and its specific location;

(iv) a computation of the damages alleged for each construction defect;

(v) an identification, with respect to each improvement and construction defect, of each Party alleged to be responsible for such defect;

(vi) a certification that each Party alleged to be responsible for the alleged construction defect has been given written notice of the defect and an opportunity to remedy the defect under the foregoing provisions of this Article 20 and that the defect has not been remedied; and

(vii) a copy of the notice of Claim served by Claimant on each Person that is named as a Party to the Claim.

(d) If the Claim is not timely submitted to arbitration, if Claimant fails to appear for the arbitration proceeding, or if Claimant fails to file and deliver the certified list of construction defects as provided in Section 20.11(c) above, the Claim shall be deemed abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of such Claims

(e) The award rendered by the Arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in accordance with applicable law and judgment obtained thereon, and execution may issue. The Arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing Party such Party's costs and expenses, including reasonable attorneys' fees.

(f) Claimant shall notify Respondent(s) prior to retaining any Person as an expert witness for purposes of any arbitration or authorized litigation.

Section 20.12 Consensus for Association Action.

The Association shall not commence any action, mediation or arbitration against Declarant or any other Party for a Claim unless Owners to which at least sixty-seven percent of the votes in the Association are allocated agree to such proceedings. However, such Owner consent must be obtained by the Association only after the Board delivers written notice to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. Such delivery shall include:

- (a) A description of the nature of the Claim and the relief sought;
- (b) A copy of any written response thereto, including any settlement proposal;
- (c) A statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association proposes to assert;
- (d) A statement that any recovery from the action may not result in receipt of funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;
- (e) An estimate of the expenses and fees to the Association that the Board anticipates will be incurred in prosecuting the claim; and
- (f) A description of the agreement with the attorneys whom the Board proposes to retain to prosecute the cause of action.

Section 20.13 Liability for Failure to Maintain an Action Against Declarant.

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

Section 20.14 Utilization of Funds Resulting from the Cause of Action.

In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based upon a cause of action, after payment of fees and costs incurred in connection with prosecution of such action, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions which were the subject of the Claim or otherwise for purposes of remedying the Claim.

Section 20.15 Exclusive Remedy.

The provisions contained in this Article shall be the sole and exclusive remedy that the Association and other Parties shall have against Declarant for any Claim, and Declarant, the Association and each Owner expressly waives any right it may have to seek resolution of any Claim contemplated by this Article 20 in any court of law or equity and any right to trial by jury.

Should any Party commence litigation or any other action against any other Party, in violation of the terms of this Article 20, such Party shall reimburse the costs and expenses, including attorneys' fees, incurred by the other Party seeking dismissal of such litigation or action. If the Claim involves Declarant or the Association, no Party shall record a memorandum or notice of *lis pendens* or similar instrument that would encumber or create a lien on real property owned by either Declarant or the Association, and any recording of the same shall be null and void and of no force or effect.

Section 20.16 Binding Effect.

This Article 20 and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

Section 20.17 Amendment.

Neither this Article 20 nor Exhibit C may be amended unless such amendment is approved by a majority of the Board and Owners to whom at least sixty-seven percent of the votes in the Association are allocated and by Declarant for so long as Declarant retains any Development Rights or Special Declarant Rights as defined in the Act. Any amendment made without the requisite Board and Owners' vote shall be null and void and shall have no effect.

Section 20.18 Warranty Disclaimer.

DECLARANT MAY, BUT SHALL NOT HAVE ANY OBLIGATION WHATSOEVER, TO CAUSE THE BUILDER OF THE PROJECT, _____ (HEREAFTER "BUILDER") TO EXTEND AN EXPRESS, WRITTEN LIMITED WARRANTY ("LIMITED WARRANTY") TO ORIGINAL PURCHASERS FROM DECLARANT OF A UNIT WITHIN THE PROJECT. THE LIMITED WARRANTY SHALL BE THE ONLY WARRANTY, EXPRESS OR IMPLIED, PROVIDED TO OWNERS AND THE ASSOCIATION WITH REGARD TO THE UNITS, THE COMMON ELEMENTS, AND THE PROPERTY WITHIN THE PROJECT.

ALL LIABILITIES, OBLIGATIONS, RIGHTS AND REMEDIES OF EACH OWNER (AND THE ASSOCIATION ON BEHALF OF THE OWNERS) ARISING OUT OF THE CONSTRUCTION AND CONDITION OF A UNIT AND THE COMMON ELEMENTS SHALL BE LIMITED TO THE EXPRESS PROVISIONS OF THE LIMITED WARRANTY. EACH OWNER AND THE ASSOCIATION ACKNOWLEDGE AND AGREE THAT OTHER THAN AS EXPRESSLY PROVIDED IN THE LIMITED WARRANTY, DECLARANT AND BUILDER DISCLAIM, AND EACH OWNER AND THE ASSOCIATION WAIVE, ALL EXPRESSED OR IMPLIED WARRANTIES RELATING TO THE UNITS, THE COMMON ELEMENTS AND THE PROPERTY WITHIN THE PROJECT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES THAT THE UNITS AND COMMON ELEMENTS WILL BE FREE FROM DEFECTS AND WILL BE FIT FOR THEIR INTENDED PURPOSES, THE IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, WORKMANLIKE CONSTRUCTION, CONFORMANCE WITH LOCAL BUILDING CODES, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY RIGHTS OR REMEDIES AS TO ANY PERSONAL PROPERTY OR "CONSUMER PRODUCT" (AS THAT TERM MAY BE DEFINED UNDER APPLICABLE FEDERAL, STATE OR LOCAL LAWS OR THEIR IMPLEMENTING REGULATIONS) THAT MAY BE A PART OF OR LOCATED IN THE UNITS (INCLUDING, WITHOUT LIMITATION, ANY PERSONAL PROPERTY OR FIXTURES WITHIN THE UNIT). EXCEPT AS SET FORTH IN THE LIMITED WARRANTY, EACH SALE OF A UNIT FROM DECLARANT TO AN ORIGINAL PURCHASER IS "AS IS" AND "WHERE IS".

EACH OWNER AND THE ASSOCIATION AGREES TO LOOK SOLELY TO BUILDER, AND NOT DECLARANT, FOR ANY AND ALL ENFORCEMENT OF THE TERMS OF THE LIMITED WARRANTY.

THE PROVISIONS OF THIS SECTION 20.18 SHALL NOT BE AMENDED EXCEPT UPON WRITTEN APPROVAL OF SIXTY-SEVEN PERCENT OF THE OWNERS WHICH SIXTY-SEVEN PERCENT MUST INCLUDE DECLARANT DURING THE PERIOD OF DECLARANT CONTROL AND SO LONG AS DECLARANT RETAINS ANY DEVELOPMENT RIGHTS OR SPECIAL DECLARANT RIGHTS AS DEFINED IN THE ACT.

IN THE EVENT THAT ANY PROVISIONS IN THIS ARTICLE 20 CONFLICT WITH ANY APPLICABLE FEDERAL OR COLORADO STATUTES WHICH PROVIDE

NON-WAIVABLE LEGAL RIGHTS, INCLUDING, WITHOUT LIMITATION, THE COLORADO CONSTRUCTION DEFECT ACTION REFORM ACT OR THE COLORADO CONSUMER PROTECTION ACT, THEN THE NON-WAIVABLE TERMS OF SUCH STATUTE SHALL CONTROL.

ARTICLE 21 GENERAL PROVISIONS

Section 21.1 Restriction on Declarant Powers.

Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 21.2 Enforcement.

Except as otherwise provided in this Declaration, the Board, Declarant or an Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 21.3 Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 21.4 Conflicts Between Documents.

In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

THIS DECLARATION is executed as of the ____ day of _____, 20__.

DECLARANT:

Ptarmigan Housing, LLC,
a South Dakota limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by
_____, as _____ of Ptarmigan Housing,
LLC, a South Dakota limited liability company, on its behalf.

Witness my hand and official seal.

My commission expires: _____.

(SEAL)

Notary Public

EXHIBIT A
to
Declaration of Condominium for Solarado Townhomes
(Legal Description)

[Lots 31A and 31B, _____, according to the plat thereof, recorded _____, 2009, at
Reception Number _____, County of Summit, State of Colorado]

EXHIBIT B
to
Declaration of Condominium for Solarado Townhomes

(Certain Recorded Easements and Licenses to which the Project is or may become Subject to)

RIGHT OF THE PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED JULY 10, 1901 IN BOOK 81 AT PAGE 246.

RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, AS CONTAINED IN INSTRUMENT RECORDED JULY 17, 1958, IN BOOK 152 AT PAGE 428 AND AS AMENDED IN INSTRUMENT RECORDED DECEMBER 28, 1978 UNDER RECEPTION NO. 185980

THE EFFECT OF ORDER EXCLUDING SUBJECT PROPERTY FROM THE SILVERTHORNE FIRE PROTECTION DISTRICT RECORDED MAY 07, 1985, UNDER RECEPTION NO. 296372.

EASEMENTS, NOTES, SETBACKS AS SHOWN AND RESERVED ON THE RECORDED PLAT OF PTARMIGAN TRAIL ESTATES, UNIT 1 RECORDED JULY 8, 1958 UNDER RECEPTION NO. 79367.

TERMS, CONDITIONS AND PROVISIONS OF ORDER FOR INCLUSION INTO THE LAKE DILLON FIRE PROTECTION DISTRICT RECORDED DECEMBER 18, 1998 AT RECEPTION NO. 584192.

TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE 07-06 DISCONNECTING LOT 31 FROM TOWN OF DILLON RECORDED AUGUST 09, 2006 AT RECEPTION NO. 828844.

TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE 07-06 DISCONNECTING LOT 31 FROM TOWN OF DILLON RECORDED AUGUST 09, 2006 AT RECEPTION NO. 828845.

TERMS, CONDITIONS AND PROVISIONS OF TOWN OF SILVERTHRONE ANNEXING LOT 31 INTO TOWN OF SILVERTHORNE RECORDED MAY 18, 2007 AT RECEPTION NO. 855670.

TERMS, CONDITIONS AND PROVISIONS OF PTARMIGAN TRAIL ANNEXATION MAP RECORDED MAY 18, 2007 AT RECEPTION NO. 855671.

TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 2007-5 ZONING PROPERTY R-15 RECORDED MAY 18, 2007 AT RECEPTION NO. 855672.

TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 07-06 DISCONNECTING LOT 31 FROM THE TOWN OF DILLON RECORDED MAY 27, 2008 AT RECEPTION NO. 888474.

EXHIBIT C
to
Declaration of Condominium for Solarado Townhomes
(Arbitration Procedures)

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