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July 6, 2007

**CONDOMINIUM DECLARATION**  
**OF**  
**TIMBERLINE COVE CONDOMINIUM**

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July 6, 2007

## CONDOMINIUM DECLARATION OF TIMBERLINE COVE CONDOMINIUMS

THIS CONDOMINIUM DECLARATION is made by Ocoee Properties Limited Partnership, a Colorado limited partnership, 9742 Quay Loop, Westminster, Colorado 80021 ("Declarant").

### ARTICLE I - STATEMENT OF PURPOSE AND DECLARATION

Section 1.1. **Owner.** Declarant is the owner of the property located in the Town of Frisco, County of Summit, State of Colorado, described as follows:

Timberline Cove Condominiums, a resubdivision of Lot 4, Holiday Tracts Subdivision, according to the Map of the Timberline Cove Condominiums recorded \_\_\_\_\_ under Reception Number \_\_\_\_\_, County of Summit, State of Colorado (the "Property").

Section 1.2. **Purpose.** The purpose of this Declaration is to create a planned community of condominiums (the "Project") which will be known as "Timberline Cove Condominiums", all in accordance with the Colorado Common Interest Ownership Act, Colo. Rev. Stat. §38-33.3-101 through §38-33.3-319 (the "Act"), as amended and supplemented from time to time.

Section 1.3. **Intention of Declarant.** Declarant intends to protect the value and desirability of the Project, further a plan for the improvements, sales and condominium ownership of the Project, create a harmonious and attractive development, and promote and safeguard the health, comfort, safety, convenience and welfare of the Owners of Units in the Project.

Section 1.4. **Development and Use.** The number of Units in the project is thirty (30). The identification number of each Unit is shown on the Condominium Map for Timberline Cove Condominiums recorded concurrently herewith in the real property records of Summit County, Colorado (the "Map").

Section 1.5. **Imposition of Covenants.** To accomplish the purposes indicated above, Declarant hereby declares that from the date of recording of this Declaration forward, the Property shall constitute a planned community under the Act, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements (collectively, these "Covenants"). These Covenants shall run with the land and be binding upon all persons having any right, title or interest in all or any part of the Property, including Declarant and their heirs, successors and assigns, and their tenants, employees, guests and invitees. These Covenants will inure to the benefit of each Owner of the Property. All Owners

(including Declarant) are subject to all the rights and duties assigned to Owners under these covenants. During the period that Declarant is the Owner of a Unit, Declarant also enjoys the same rights and assumes the same obligations of they relate to each Unit owned by Declarant.

Section 1.6. **Governing Documents.** The Timberline Cove Condominiums' Governing Documents consist of the following, as they may be amended:

<b>GOVERNING DOCUMENTS</b>	
<b>Articles of Incorporation</b> ..... (filed with the Colorado Secretary of State)	establish the Association as a non-profit corporation under Colorado law
<b>Bylaws</b> ..... (the Board of Directors adopts)	govern the Association's internal affairs, such as voting, elections, meetings, etc.
<b>Declaration</b> ..... (recorded in the Public Records)	creates obligations which are binding upon the Association and all present and future Owners of property in Timberline Cove Condominiums
<b>Rules and Regulations</b> ..... (Board or Owners may adopt; initial set attached as Exhibit __)	govern use of property, activities, and conduct within Timberline Cove Condominiums
<b>Board Resolutions</b> ..... (Board Adopts)	establish rules, policies and procedures for internal governance and Association activities, regulate operation and use of Common Area.

### ARTICLE III - DEFINITIONS

Section 2.1. **Definitions.** The following words when used in this Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

A. **"Act"** means the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq., as it may be amended from time to time.

B. **"Agencies"** shall mean and collectively refer to the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Veterans Administration (VA), the Colorado Housing Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which

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

C. **“Articles”** means the Articles of Incorporation of Timberline Cove Condominium Association, Inc. on file with the Colorado Secretary of State, and any amendments which may be made.

D. **“Assessments”** means the Periodic, Supplementary, Special and Default Assessments levied pursuant to that Article named Assessments below.

E. **“Association”** means the Timberline Cove Condominium Association, a Colorado non-profit corporation, and any successor entity by whatever name, charged with the duties and obligations of administering the Project.

F. **“Governing Documents”** means this Declaration, the Map, the Articles and the Bylaws of the Association, and any procedures, rules, regulations or policies adopted under such documents by the Association.

G. **“Building”** means the building (including all fixtures and improvements contained within it) located on the Property in which Condominium Units are located.

H. **“Bylaws”** means the Bylaws adopted by the Association as amended from time to time.

I. **“Common Elements”** means all of the Project, except the Condominium Units, but including, without limiting the generality of the foregoing, the following components:

(i) The Property;

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

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

(iv) In general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.



The Common Elements shall also include the Limited Common Elements which are exclusively reserved for use by an Owner or as otherwise provided in this Declaration.

J. **“Common Expenses”** means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements and property owned by the Owners; (B) providing facilities, services and other benefits to Owners and their guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Governing Documents, (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Project; and (F) operating the Association; and

(ii) reserves for any such costs, expenses and liability.

K. **“Condominium Map” or “Map”** means the Condominium Map for Timberline Cove Condominiums, recorded or to be recorded in the records of the office of the Clerk and Recorder of Summit County, Colorado, including any engineering survey or surveys of the Property locating the Condominium Units in the Buildings on the Property (including the original Map, any amendments thereto, and any supplemental maps), and depicting the floor plans of the Units together with other drawings or diagrammatic plans and information regarding the Property as may be included in the discretion of the Declarant, as recorded by Declarant in the office of the Clerk and Recorder of Summit County, Colorado.

L. **“Condominium Unit” or “Unit”** means the fee simple interest in and to a Unit, together with the undivided interest in the Common Elements appurtenant to the Unit (determined in each case by dividing the number of square feet in the Unit in question by the number of square feet in all completed Units contained within the Property), as specified in the attached Exhibit A. Each Unit is depicted on the Map and consists of enclosed rooms in the Building and is bounded by the unfinished perimeter walls, ceilings, floors, doors and windows thereof. For the purpose of defining a Unit, the terms set forth below shall be defined as follows:

(i) **“Unfinished wall”** means the sheetrock which constitutes the interior face of a wall of a Unit and the interior surface of any windows or doors within such wall.

(ii) **“Unfinished ceiling”** means the concrete slabs, unfinished sheetrock or other structural materials which constitute the ceiling of a Unit.

(iii) **“Unfinished floor”** means the concrete slab which constitutes the floor of a Unit.

A Unit includes the wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, window frames, doorsteps, stoops, and interior doors and door frames.

A Unit also includes fixtures, hardware and all improvements contained within the unfinished walls, ceilings and floors; provided that a Unit will not include any of the structural components of the Building or utility or service lines located within a Unit but serving more than one Unit.

M. **"Declarant"** means Ocoee Properties Limited Partnership, a Colorado limited partnership and its successors and assigns.

N. **"Declaration"** means and refers to this Condominium Declaration of Timberline Cove Condominiums, a condominium community in Summit County, Colorado.

O. **"Eligible Mortgagee"** means a First Mortgagee (as hereinafter defined) who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Units. The notice must include the Unit number and street address of the Unit on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in that Article entitled Mortgagee's Rights below.

P. **"Executive Board"** means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.

Q. **"First Mortgage"** means any Deed of Trust or Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

R. **"First Mortgagee"** Means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

S. **"Limited Common Elements"** means a portion of the Common Elements allocated by the Declaration or Map for the exclusive use of one or more Owners but fewer than all the Owners; the Limited Common Elements are depicted on the Map and described in this Declaration and as set forth in the Act. 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. Without limiting the foregoing, the Limited Common Elements shall also include any balcony, deck, patio, entryway or porch adjacent to a Unit.

T. **"Manager"** shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

U. **"Member"** means every person or entity who holds membership in the Association.

V. **“Mortgage”** means any mortgage, deed of trust or other document which encumbers any Unit or interest therein as security for payment of a debt or obligation.

W. **“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.

X. **“Owner”** means the owner of record (including Declarant), whether one or more persons or entities, of fee simple title to any Unit, and “Owner” also includes the seller under a contract for deed covering a Unit; Owner does not mean those having such interest in a Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Unit pursuant to foreclosure or other proceedings.

Y. **“Project”** means the planned community created by this Declaration, consisting of the Property and any other improvements constructed on the Property and as shown on the Map.

Z. **“Property”** means the real property described in Section 1.1 and subject to this Declaration.

AA. **“Successor Declarant”** means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Summit County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant’s rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

### **ARTICLE III - MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS**

Section 3.1. **The Association.** Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 3.2. **Transfer of Membership.** An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

Section 3.3. **Class of Membership.** The Association shall have one (1) class of voting membership. Members shall be all Owners who, except as otherwise provided for in this Declaration, shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each residential Condominium Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed in accordance with the Bylaws. The vote allocated to the Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

**Section 3.4. Period of Declarant's Control.** During the period of Declarant's control, Declarant and any successor of Declarant who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant, will have exclusive power to appoint and remove members of the Executive Board and officers of the Association subject to the limitations in the Act. This period of Declarant's control will terminate no later than sixty (60) days after conveyance of 75% of the Units that may be created to Owners other than Declarant, or two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's control, but, in that event, the Declarant may require for the duration of the period of Declarant's control, that specified actions of the Association or the Executive Board, as described in a recorded instrument by the Declarant, be approved by the Declarant before they become effective.

**Section 3.5. Compliance with Governing Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Governing Documents. The obligations, burdens and benefits of membership in the Association concern the land and shall be covenants running with each Unit for the benefit of all other Units.

**Section 3.6. Books and Records.** The Association shall make available for inspection, upon advance request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Governing 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.

**Section 3.7. Manager.** The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**Section 3.8. Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents, and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

**Section 3.9. Powers of the Executive Board.** The Executive Board shall have power to take the following actions:

A. Adopt and publish rules and regulations governing the use of the Common Elements and governing the personal conduct of the Members and their guests on the Project; the Association may establish penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

B. Suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in that Article named Assessments. Such rights may also be suspended after notice and hearing for a period up to ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter;

C. Exercise for the Association all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by the Act; and

D. Assign its right to future income, including the right to receive Common Expense Assessments.

#### **ARTICLE IV - MAINTENANCE OF UNITS AND COMMON ELEMENTS**

Section 4.1. **Maintenance of Common Elements.** Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association's property in good order and condition and shall otherwise manage and operate the Common Elements and such property as it deems necessary or appropriate. In this regard the Association may:

A. construct, modify, add to, replace or renovate any improvements that are located on or constitute a part of any Common Element;

B. plant and replace trees, shrubs and other vegetation on any Common Element;

C. place, maintain and replace signs upon any Common Element;

D. adopt and enforce rules and regulations regulating the use and Common Elements;

E. impose and collect fees for the use of any Common Element; and

F. take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

#### **Section 4.2. Maintenance of Units.**

A. Each Owner will maintain the Owner's Unit, including the interior walls, ceiling, and

floor finishes and all fixtures therein, at the Owner's sole cost and expense. Each Owner will keep in good order and repair, including cleaning and snow removal, any Limited Common Element allocated to the Owner's such Unit (including, without limitation, balconies, patios and decks). The Association may for economy, uniformity, or structural integrity perform any Limited Common Element maintenance. For example, exterior window glazing in a Unit will be maintained by the Owners unless the Executive Board determines that the Association should maintain such glazing, either at Association Expense or Owner expense.

B. In the event that a Unit is not properly maintained by an Owner, then the Association, after ten (10) days prior written notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements thereon to a condition of good order and repair. 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 an unpaid assessment levied in accordance with that Article entitled Assessments below.

Section 4.3. **Limited Common Expense Allocation.** Any expense associated with the repair or replacement of a Limited Common Element which is an appurtenance to all Units in the Project shall be assessed as a Common Expense. Repair or replacement of a Limited Common Element which is not provided to all Units (e.g., patios and decks) shall be assessed to the Unit or equally among the Units to which the Limited Common Element is allocated as provided in Section 7.6.

Section 4.4. **Allocation of Specified Common Elements.** The Executive Board may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portions of the Common Elements.

Section 4.5. **Maintenance Contract.** The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power or function so delegated by written instrument executed by or on behalf of the Executive Board.

## **ARTICLE V - PROPERTY RIGHTS OF OWNERS & RESERVATIONS BY DECLARANT**

Section 5.1. **Owner's Easement of Enjoyment.** Every Owner has a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the

title to every Unit, subject to the provisions contained herein.

Section 5.2. **Recorded Easements.** The Property shall be subject to all easements as shown on the Map and to any other easements of record or in use as of the date of recordation of this Declaration as listed in Exhibit B. In addition, the Property is subject to those easements set forth in this Article.

Section 5.3. **Utility Easements.** There is hereby created a general easement upon, across, over, in and under the Common Elements for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, gas, telephone, electrical, and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies authorized by the Declarant or the Executive Board which provide such services to install and maintain necessary equipment, wires, circuits and conduits under the Property. Such utilities may temporarily be installed above ground during construction, if approved by Declarant. Any person or utility company disturbing the surface of the Property during installation, maintenance or repair of facilities within an easement will restore the surface to its original grade and revegetate the surface to its former condition.

Section 5.4. **Easement for Ingress and Egress.** Declarant hereby grants as an appurtenance of each Unit a non-exclusive easement of ingress and egress across the Common Elements as shown on any recorded Map of the Property to each Unit to assure access from a public road to each Unit. The specific means of ingress and egress shall be subject to change as Declarant shall from time to time deems necessary so long as a reasonable means of access is always provided.

Section 5.5. **General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Manager, and their respective officers, agents, employees, and assigns, upon, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Governing Documents, including the right to enter upon any Unit.

Section 5.6. **Declarant's Rights Incident to Construction.** Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, 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 construction on the Units of 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 prohibits the occupancy, use, or access to the Project by the Owners.

Section 5.7. **Special Declarant Rights.** Declarant reserves the right to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

A. Completion of Improvements. The right to complete improvements indicated on Map filed with the Declaration.

B. Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Project and models. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time.

C. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Project.

D. Merger. The right to merge or consolidate a Project with another Project of the same form of ownership.

E. Control of Association and Executive Board. The right to appoint or remove any Officer of the Association or any Executive Board member during the period of Declarant control, subject to the limitation of the Act.

The Special Declarant Rights contained in this Section shall not terminate until the earlier of (a) 20 years from the date this Declaration is recorded; (b) Recording by Declarant of a written statement that all sales activity has ceased; or c) as provided in the Act.

**Section 5.8. Easement to Inspect and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Project, including Units, and a perpetual nonexclusive easement of access through the Project to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner with the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**Section 5.9. Right to Notice of Design or Construction Claims.** No person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Project in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the Owner's concerns and conduct their own inspection.

## **ARTICLE VI - INSURANCE AND FIDELITY BONDS**

**Section 6.1. Authority to Purchase.** All insurance policies relating to the Common Elements shall be purchased by the Association or its duly authorized agent. The Executive Board, the Manager, and Declarant shall not be liable for failure to obtain any coverages required by this



Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. In such event, the Executive Board shall cause notice of such fact to be delivered to all Owners.

Section 6.2. **Notice to Owners.** The Executive Board shall promptly furnish to each Owner written notice of the procurement of, subsequent change in, or termination of, insurance coverages obtained on behalf of the Association under this Article.

Section 6.3. **General Insurance Provisions.** All such insurance coverage obtained by the Executive Board shall be governed by the following provisions.

A. As long as Declarant owns any Unit on which a certificate of occupancy has been issued, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for (or waive any rights with respect to) warranty claims against Declarant as developer of the Project.

B. The deductible amount, if any, on any insurance policy purchased by the Executive Board may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Executive Board; or alternatively, the Executive Board may treat the expense as an assessment against an Owner whose Unit is specifically affected by the damage or whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with that Article entitled Assessments, Sections entitled Special Assessments and Default Assessments below.

C. The insurance coverage described in this Article shall be considered minimum coverage and the Association will be obligated to secure and maintain such other and/or additional coverage as may be required by law or §38-33.3-313 of the Act, which Section 313 is also applicable to supplement the provisions of this Article.

D. Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Executive Board pursuant to this Article shall be a Common Expense to be paid by regular Assessments levied by the Association.

Section 6.4. **Physical Damage Insurance on Improvements.** The Association shall obtain and maintain in full force and effect physical damage insurance on all Condominium Units, (excluding, unless the Executive Board directs otherwise, the fixtures, equipment, furniture, wall coverings, improvements, additions or other personal property installed by Owners) and all insurable Common Elements improvements within the Project, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the

following:

A. Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard all-risk endorsement including but not limited to sprinkler leakage, debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;

B. Property damage insurance covering personal property owned by the Association.

**Section 6.5. Provisions Common to Physical Damage Insurance.**

A. In contracting for the policy or policies of insurance obtained pursuant to Section 6.4, the Executive Board shall make reasonable efforts to secure coverage if the Board deems such coverage advisable, which provides the following:

- (i) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made pursuant to this Declaration not to do so.
- (ii) The following endorsements (or equivalent): (a) "cost of demolition"; (b) "contingent liability from operation of building laws or codes"; (c) "increased cost of construction"; and (d) "agreed amount" or elimination of co-insurance clause.
- (iii) Periodic appraisals to determine replacement cost, as more fully explained in Section 6.5.B below.
- (iv) A provision that no policy may be canceled, invalidated, or suspended on account of the conduct of any Owner (including such Owner's tenants, servants, agents, invitees, and quests), any member of the Executive Board, officer, or employee of the Association or the Manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be covered by the Association, the Manager, any Owner, or Mortgagee.
- (v) Any other provisions the Executive Board deems advisable.

B. Prior to obtaining any policy of physical damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the Executive Board shall obtain an appraisal from a general contractor, an insurance company, or such other source as the Board may determine, of the then replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this Article.

C. A duplicate original of the policy of physical damage insurance, all renewals thereof,

and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums and any notice issued under Section 6.5.A. (iv) above, shall be delivered by the insurer to the Association and upon request to any Owner or Mortgagee. The Mortgagee on any Unit shall be entitled to receive notice promptly of any event giving rise to a claim under such policy arising from damage to such Unit.

**Section 6.6. Liability Insurance.**

A. The Executive Board shall obtain and maintain in full force and effect commercial general liability insurance with such limits as the Executive Board may from time to time determine, insuring the Association, each member of the Executive Board, the Manager, and their respective employees and agents. The liability policy will cover claims and liabilities arising out of or incident to the ownership existence, management, operations, maintenance or use of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

B. The Executive Board shall review such limits once every two years, but in no event shall such insurance be less than \$1,000,000.00 covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

**Section 6.7. Fidelity Insurance.** To the extent obtainable at reasonable cost, fidelity insurance shall be obtained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, fidelity coverage shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 25% of the estimated annual operating expenses of the Association, including reserves. Such insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

**Section 6.8. Provisions Common to Physical Damage Insurance, Liability Insurance, and Fidelity Insurance.** Any insurance coverage obtained by the Association under the provisions of this Article shall be subject to the following provisions and limitations:

A. The named insurance under any such policies shall include Declarant, until all the Units have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Unit's Mortgage.

B. Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

C. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;

D. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control;

E. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including cancellation for non-payment of premium) without at least thirty (30) days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies; and

F. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Executive Board, the Association, the Manager, and any Owner or their respective agents, employees, or tenants; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

Section 6.9. **Professional Liability Insurance of Officers and Directors.** To the extent obtainable at reasonable cost, appropriate professional liability insurance shall be maintained by the Association to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 6.10. **Worker's Compensation Insurance.** The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 6.11. **Other Insurance.** The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 6.12. **Insurance Obtained by Owners.** Each Owner may obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering all personal property, and wall coverings, improvements, betterments and additions installed by and Owner beyond the improvements of the Declarant. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as such Owner in the Owner's sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage

obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Elements.

The Executive Board may require an Owner who purchases insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

## ARTICLE VII - ASSESSMENTS

Section 7.1. **Obligation.** Owners, by accepting a deed for a Unit, are deemed to covenant to pay the Association (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (3) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Governing Documents or because the Association has incurred an expense on behalf of the Owner under the Governing Documents.

Section 7.2. **Purpose of Assessments.** The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Map.

Section 7.3. **Budget.** The Executive Board will adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within ninety (90) days after adoption of any proposed budget, the Executive Board will mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all the Owners and will set a date for a meeting of the Owners to consider ratification of the budget. The budget proposed by the Executive Board will be deemed approved by the Owners unless at that meeting a majority of all Owners vote to veto the budget. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Executive Board is not vetoed.

Section 7.4. **Capitalization of Association - Reserves.** The Association or Declarant shall require each buyer of a Unit to make a non-refundable payment to the Association in an amount equal to three times the monthly installment of the Periodic Assessment for the Unit, which sum shall be segregated and held, without interest, by the Association to meet unforeseen expenditures, acquire additional services or equipment for the Owners or as a maintenance reserve. A Reserve Fund contribution shall be collected and transferred to the Association at the time of closing of each

sale, or re-sale, of a Unit, and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall not be entitled to a credit from the transferee for any unused portion of the Reserve Fund. Declarant may not use any of the Reserve Fund to defray any of its expenses, construction costs or to make up budget deficits.

**Section 7.5. Periodic Assessments.** Periodic Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Periodic Assessments shall be payable on a prorated basis each month in advance and shall be due on the first day of each month, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the periodic 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 Periodic Assessments in excess of the actual expenses incurred in any fiscal year. Until the Association makes a Common Expense Assessment, the Declarant shall pay all Common Expenses.

**Section 7.6. Apportionment of Periodic Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses which will be divided among the Owners in accordance with the respective undivided interests in the Common Elements. The square footage in each Unit is measured by Declarant's architect divided by the total square feet of all Units is the formula used to determine the undivided interest in the Common Elements, which is set forth in Exhibit A, subject to the following exceptions. Any extraordinary maintenance, repair or restoration work on, or Common Expense benefitting, fewer than all of the Units or Limited Common Elements shall be exclusively borne by the Owners of the benefitted Units equally, or in any other proration the Executive Board reasonably determines. Any extraordinary insurance cost incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Any Common Expense caused by the misconduct of any Owner shall be assessed solely against such Owner's Unit. Any Common Expense incurred or billed to the Association on a per unit basis may be allocated to each Unit in accordance with such Unit cost.

**Section 7.7. Supplementary Assessments.** In the events the Executive Board shall determine, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Executive Board shall revise the budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the ratification of such budget. Upon request, the Executive Board will deliver a summary of the revised budget to any Mortgagee. Based on such revised budget, the Executive Board may make a supplementary assessment for such fiscal year against each Unit.

**Section 7.8. Special Assessments.** In addition to the Periodic Assessments authorized by

this Article, 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 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, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners as provided in this Article, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guest, tenants or invitees) shall be borne by that Owner. Notice in writing in the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

**Section 7.9. Default Assessments.** All monetary fines assessed against an Owner pursuant to the Governing 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 Governing Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to that due date.

**Section 7.10. Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Periodic, Special, or Default Assessment, which is not paid within thirty (30) 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 date of delinquency at the yearly rate of four points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish, not to exceed twenty-one percent (21%) per annum (Default Rate);
- C. Suspend the voting rights of the Owner or the right to use any Common Element during any period of delinquency;
- D. Accelerate any portion or all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Disconnect any utility services to the Unit which are paid as a Common Expense;

F. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

G. File a statement of lien with respect to the Unit and proceed with foreclosure as set forth below.

Upon payment of delinquent Assessments, the Association may forego any collections remedies, decelerate any Assessment installments which were accelerated and restore any rights to the previously delinquent Owner.

Assessments chargeable to any Unit shall constitute a lien on such Unit, including any improvements on the Unit. To evidence the lien created under this Section, the Association may, but is not required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Unit, and (v) a description of the Unit. The notice shall be signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and the Association shall serve the notice upon the Owner by mail to the address of the Unit or to such other address as the Association may have in its files for such Owner. At least ten (10) days after the Association mails the Owner such a notice, the Association may record the same in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. Thirty (30) days following the date the Association mails the notice, the Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under Colorado law. In the events 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 attorney's fees incurred in connection with the enforcement of the lien. 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.

**Section 7.11. Personal Obligation.** The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his 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 attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

**Section 7.12. Successor's Liability for Assessment.** In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such for such Assessments, all successors to the fee simple title of a Unit, except as provided in the Section named Subordination of Lien below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Unit without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall



terminate upon termination of such successor's fee simple interest in the Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association as set forth below.

Section 7.13. **Subordination of Lien.** The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a First Mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent, except that the Association claims the priority for 6 months' assessment lien as granted in the Act. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. Seller's transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expenses at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of any Assessments made after the sale or transfer.

Section 7.14. **Notice to Mortgagee.** The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. 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 7.15. **Statement of Status of Assessment Payment.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit.

## ARTICLE VIII - DAMAGE OR DESTRUCTION

Section 8.1. **The Role of the Executive Board.** Except as provided in that Section named Decision Not to Rebuild Common Elements, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the Association's name under that Article named Insurance, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to that Article named "Insurance" may be referred to as "Association-Insured Property").

Section 8.2. **Estimate of Damages or Destruction.** As soon as practicable after an event

causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the cost of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

**Section 8.3. 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 8.4. Funds for Repair and Reconstruction.** Proceeds received by the Association from any hazard insurance carried by the Association shall be used to repair, replace and reconstruct the Association-Insured Property. If said proceeds 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 that Article named Assessments, Section named Special Assessments, but subject to applicable law, levy, assess and collect in advance 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 8.5. 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, and 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 equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

**Section 8.6. Decision Not to Rebuild Common Elements.** If at least sixty seven percent (67%) of the Owners and all directly adversely affected Owners (as determined by the Act) agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

## ARTICLE IX - CONDEMNATION

Section 9.1. **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 is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instruction 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 9.2. **Partial Condemnation, Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows: If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in that Article named Damage or Destruction 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 made not to repair or restore, or if there are net funds remaining after any such replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 9.3. **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 terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in that Section named Disbursement of Funds for Repair and Reconstruction above.

## ARTICLE X - DURATION OF COVENANTS AND AMENDMENT

Section 10.1. **Covenants Binding.** Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall by virtue of acceptance of any right, title or interest in any of the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Project; (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may

appear, and all Owners within the Subdivision; and (iv) shall run with the land.

**Section 10.2. Amendment.**

A. Except as otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding not less than sixty percent (60%) of the votes possible to be cast under this Declaration. Any amendment must be executed by the president of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements set forth in that Article entitled Mortgagee's Rights Shall be met, if appropriate.

B. Notwithstanding anything to the contrary contained in this Declaration:

(i) The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision of any of such documents without the consent of any of the Owners or First Mortgagees.

(ii) The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles of Incorporation and Bylaws of the Association at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the requirements and powers set forth in the Act, or to conform with any amendments, modifications, revisions or revocations of the Town of Frisco Development Plan, without the consent of the Owners or any First Mortgagees.

**Section 10.3. When Modifications Permitted.** Notwithstanding the provisions of that Section named Amendment above or that Section named Revocation below, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

**Section 10.4. Termination.** This Project may be terminated as provided in that Act upon agreement of the Owners holding 67% of the votes in the Association evidenced by a written instrument duly recorded.

**ARTICLE XI - INITIAL PROTECTIVE COVENANTS**

**Section 11.1. Plan of Development; Applicability; Effect.** Declarant has established a general plan of development for the Property in order to protect the Owners' collective interests and the aesthetics and environment within the Project. In furtherance of that general plan, this

Declaration and the Association's Documents, establish affirmative and negative Covenants, easements, and restrictions on the Property, subject to certain rights vested in the Executive Board and the Owners to enable them to respond to changes in circumstances, conditions, needs and desires within the Project.

Section 11.2. **Authority to Promulgate Use Restrictions.** Initial use restrictions applicable to the Project are set forth below. Amendment of these use restrictions requires a vote of sixty percent (60%) of all votes in the Association. Provided, however, in accordance with the duty to exercise reasonable business judgment, the Executive Board, with the consent of the Declarant during the period of Declarant Control, may adopt rules and regulations which modify, limit, create exceptions to, or expand the initial use restrictions set forth in this Section.

Section 11.3. **Owners Acknowledgment.** All Owners, tenants, guests and invitees of Units are given notice that use of their Unit is limited by provisions of each of the Governing Documents as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that all restrictions upon the use and occupancy of a Unit may change from time to time.

Section 11.4. **Rights of Owners.** The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

- A. Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.
- B. Speech. The rights of Owners to display political signs and symbols in or on their Units of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and related users.
- C. Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside Units of the kinds normally displayed in units located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage or disturbance to other Owners and occupants.
- D. Activities within Units. No rule shall interfere with the activities carried on within the confines of a Unit, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units, or that create an unreasonable source of annoyance.
- E. Pets. No animals of any kind shall be kept, raised or bred on any portion of the

Project, except not more than two dogs, cats or other interior confined household pets may be kept by an Owner. The rules and regulations may regulate, permit or prohibit the kind and number of such pets from time to time.

(i) **Containment.** Household pets, such as dogs and cats, must be contained in a Unit or on the deck or patio that is assigned to a Unit as a Limited Common Element. Such pets may not be permitted to run at large at any time.

(ii) **Leashes.** Pedestrians within the Property who are accompanied by pets permitted under this Declaration must have a pet under the pedestrians' direct control by use of a leash not to exceed 10 feet in length.

(iii) **Nuisance.** Owners of pets on the Property will be required to take all steps necessary to control excessive barking or other disturbances caused by their pets. The Association may require the removal of any pet which causes a nuisance.

F. **Reasonable Rights to Develop.** No Rule by the Association or Executive Board shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

G. **Abridging Existing Rights.** If any Rule would otherwise require Owners or related users to dispose of personal property which they owned at the time they acquired their interest in the Unit and such ownership was in compliance with all Rules and Regulations in force at that time, such rule shall not apply to any such Owners without their written consent. However, all subsequent Owners and related users of that Unit shall comply with such rule.

Section 11.5. **Initial Use Restrictions.** The following restrictions apply within the Project unless expressly authorized (and in such cases, subject to such conditions as may be imposed) by a resolution unanimously adopted by the Executive Board:

A. **Subdivision.** No Unit may be subdivided into two or more Units, or the boundary lines of any Unit altered;

B. **Leases.** The term "lease," as used herein, shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, term or month to month rental. Owners shall have the right to lease their Units only under the following conditions.

(i) All leases shall be in writing.

(ii) All leases shall provide that the terms of the lease and the tenant's occupancy of the Unit shall be subject in all respects to the provisions of the Governing Documents, as the same may be amended from time to time, and that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by the Executive Board, the Owner/landlord, or both.

(iii) The Association may require any Owner who leases his Unit to forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant.

C. Restrictions on Vehicles.

(i) Parking or storing of vehicles within the Property shall be subject to Rules and Regulations enacted by the Executive Board and provisions of this Declaration.

(ii) No portion of the Common Elements shall be used as a parking, storage, display or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, motor home, running gear, boat or accessories thereto.

(iii) No abandoned or inoperable vehicles of any kind shall be stored or parked on the Project. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, van, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have installed within it an operable propulsion system.

(iv) Unlicensed motor vehicles shall not be operated on the Common Elements. The definition of unlicensed motor vehicles shall include, but is not limited to, go-carts, mini-bikes, unlicensed motor bikes, motorized scooters, snow mobiles and all-terrain vehicles.

(v) Parking of permitted vehicles upon the designated parking area shall be subject to Rules and Regulation of the Executive Board.

D. Timeshare Restriction. 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 without the specific prior written approval of the Association and the Declarant (during the period of Declarant's control as further described in that Section named Period of Declarant's Control) in their absolute discretion, which approvals shall be in addition to the requirements of the applicable ordinances of the Town of Frisco.

E. Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

F. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any Unit.

G. Window Treatment. In order to keep the Condominium Project consistent and uniform in appearance as viewed from the exterior, only window coverings colored beige, white or natural shall be allowed.

H. Fires. Only natural gas or propane grills will be allowed on any deck or balcony. All charcoal or other grills are prohibited until such time as Declarant no longer appoints directors to the Executive Board, and then only upon the affirmative vote of the Executive Board.

I. Nuisances. Any use, activity, or practice which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Elements or any portion of the planned community created hereunder. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project or a portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents. In no event shall the activities of the Declarant or of an approved builder which are reasonably necessary to the exercise of the rights granted by this Declaration and the Act be considered a "nuisance."

J. Balconies and Patios. Lawn furniture and propane gas barbecue grills may be used and stored on balconies or patios of Units. Charcoal grills are prohibited. Owners understand their use of the exterior Limited Common Elements can detrimentally affect other Owners. The Executive Board may adopt rules governing appropriate use and appearance of the balconies and patios.

K. Structural Alterations and Exterior Appearance. No structural alterations to any Unit (including the construction of any additional skylight) or any Common Element shall be made or caused to be made by any Owner without the prior written approval of the Association and without compliance with the provisions of Section 11.6. No structural alterations may be made by any Owner to any exterior Common Elements, windows or doors, and no patio or balcony area may be enclosed.

#### Section 11.6. **Construction Approval.**

A. Rights With Respect to Remodeling and Construction. Owners of all Units may make no interior addition to or change or alteration to a Unit until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Executive Board. The Executive Board may exercise its sole discretion when considering a request under this Section.

B. Purpose and General Authority. The Board shall review, study and either approve or reject proposed improvements to the Unit, all in compliance with this Declaration and as further set forth in the rules and regulations the Executive Board may establish from time to time to govern its proceedings. No improvements requiring a building permit shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the improvements shall have been approved by the Executive Board; provided, however, that minor cosmetic improvements (such as painting of interior walls or wallpapering) that are not visible from the outside of the Building, that do not affect any of



the Common Elements or the Limited Common Elements, and that do not cause any noise or other disturbance may be undertaken without such approval. All improvements shall be constructed only in accordance with approved plans.

C. Executive Board Discretion. The Executive Board shall exercise reasonable efforts to provide that all improvements conform and harmonize with the Project as to design, quality and type of construction, seals, materials, color, and location in the Unit, and the schemes and aesthetic considerations set forth in the Project Documents. The actions of the Executive Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

D. Expenses. All expenses of the Executive Board shall be paid by the Owner requesting the Executive Board's application approval and shall not constitute a Common Expense. The Executive Board shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Executive Board from time to time and to require any consultants such as architects or engineers to be paid by the Owner as a condition to approval.

E. Other Requirements. Compliance with the Executive Board's process is not a substitute for compliance with the Town of Frisco building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of any improvements.

F. Limitation on Liability. The Executive Board shall use its judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Executive Board nor any individual Executive Board member shall be liable to any person for any official act of the Executive Board in connection with submitted plans and specifications, except to the extent the Executive Board or any individual Board member acted with malice or wrongful intent. Approval by the Board does not necessarily assure approval by the appropriate governmental board or commission for the City of Aurora. Notwithstanding that the Executive Board has approved plans and specifications, either the Executive Board nor any of its members shall be responsible or liable to any Owner or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Executive Board nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Project Documents, nor for any structural or other defects in any work done according to such plans and specifications.

G. Enforcement and Inspection. Any member or authorized consultant of the Executive Board, or any authorized officer, Director, employee, or agent of the Association may enter upon any Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction in the Unit to determine whether the improvements have been or are being built in compliance with the Project Documents and the plans and specifications approved by the Board.

H. Continuity of Construction. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within six months after commencement, unless an exception is granted in writing by the Executive Board.

I. Deemed Nuisances. Every violation of these Covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed by such violation by law or equity against a Member shall be applicable. Without limiting the generality of the foregoing, these Covenants may be enforced as provided below:

(i) The Board may adopt a schedule of fines for failure to abide by the Executive Board's rules and regulations, including fines for failure to obtain any required approval from the Executive Board.

(ii) Subject to the requirements of the Bylaws, the Association, upon request of the Executive Board and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these Covenants. The Owner of the improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association shall bear interest at the Default Rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest shall be a Default Assessment enforceable as provided in that Article entitled Assessments.

## ARTICLE XII - MORTGAGEE'S RIGHTS

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

**Section 12.1. Title Taken by Mortgagee.** Any Mortgagee holding a First 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 due and payable as of the date title to the Unit is acquired.

**Section 12.2. 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 First Mortgage against the Unit.

**Section 12.3. Right to Pay Taxes and Charges.** Mortgagees who hold First 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 therefore from the Association.

**Section 12.4. Financial Statement.** Upon written request from any Agency or Mortgagee, which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days any financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

**Section 12.5. Notice of Action.** Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

A. Any proposed amendment of the Governing Documents effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit, or (iv) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 12.6 below;

B. Any proposed termination of the common interest community;

C. 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 First Mortgage held, insured or guaranteed by such Agency;

D. Any delinquency in the payment of Assessments owed by the Unit Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;

E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article VI.

**Section 12.6. Amendment of Association Documents.** Approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

A. Voting;

B. Assessments, Assessment liens or subordination of such liens;

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

- D. Insurance or fidelity bonds;
- E. Reallocation of interests in the Common Elements, or rights to use of the Common Elements;
- F. Responsibility for maintenance and repair of the Project;
- G. Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- H. Boundaries of any Unit;
- I. The interests in the Common Elements;
- J. Convertibility of Units into Common Elements or of Common Elements into Units;
- K. Imposition of any restrictions on the leasing Units;
- L. Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;
- M. Establishment of self-management by the Association where professional management has been required by any Agency;
- N. Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;
- O. Hazard or fidelity insurance requirements; and
- P. Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

**Section 12.7. Action by Mortgagee.** If this Declaration or any Governing Documents require the approval of any Agency or Mortgage then, if any Mortgagee or Agency fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

### **ARTICLE XIII - DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

#### **Section 13.1. Agreement to Encourage Resolution of Disputes Without Litigation.**

- A. Declarant, the Association and its officers, directors, and committee members,

Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection B, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in good faith effort to resolve such Claim.

B. As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations and duties of any Bound Party under the Government Documents; or
- (iii) the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:

- (a) any suit by the Association to collect assessments or other amounts due from any Owner;
- (b) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

### Section 13.2. **Dispute Resolution Procedures.**

A. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party

("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

**B. Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

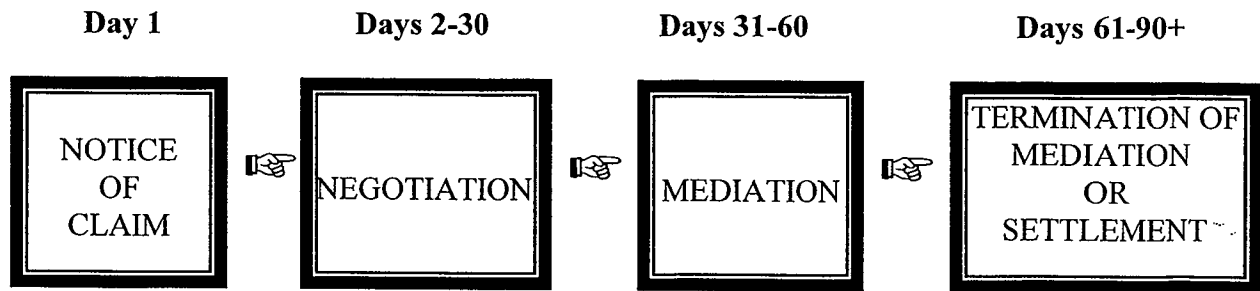
**C. Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2.A (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

## ALTERNATIVE DISPUTE RESOLUTION PROCESS



D. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In the event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### Section 13.3. **Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by 75% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- A. initiated during the period of Declarant control;
- B. initiated to enforce any of the provisions of the Governing Documents, including collection of Assessments and foreclosure of liens;
- C. initiated to challenge *ad valorem* taxation or condemnation proceedings;
- D. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- E. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## ARTICLE XIV - GENERAL PROVISIONS

Section 14.1. **Mailing of Notices.** All notices, demands or other notices intended to be served upon an owner shall be sent by ordinary or certified mail, postage prepaid, addressed in the name of such owner according to the Association's records. All notices, demands or other notices intended to be served upon the managing agent or the Executive Board of the Association shall be sent by ordinary or certified mail, postage prepaid to the registered agent for the Association as indicated in the records of the Secretary of State. Such agent and address may be changed by subsequently recorded documents or by written notice to all affected parties.

A. Any owner may, by notice in writing, provide the Association with a different address for mail to such owner which shall be used by the Association in lieu of such address above provided.

B. Any First Mortgagee, upon written request, shall be entitled to notice from the Association or managing agent under the same circumstances as its mortgagor, at such address as such mortgagee shall provide by such notice.

C. Any notice provided herein shall be deemed given when deposited postage prepaid in the United States mail.

Section 14.2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 14.3. **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.


Section 14.4. **References to the Town of Frisco Standards.** Wherever in this Declaration there is a reference to land use regulations, zoning regulations, or other Town of Frisco standards, any plats approved by the Town of Frisco or any other federal, state or local rule, law or regulation, such references shall automatically be waived, released, modified or amended, as the case may be, to correspond with any subsequent waiver, release, modification or amendment of such regulations, zoning, other Town of Frisco standards, ordinances, plats or any other rule or law.

Section 15.5. **General.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders; similarly, capitalization of letters in a word shall not be construed to affect the meaning of such word.



IN WITNESS WHEREOF, Declarant has executed the Declaration as of this 9<sup>th</sup>  
day of JULY, 2007.

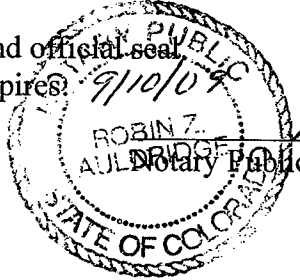
OCOEE PROPERTIES LIMITED PARTNERSHIP,  
a Colorado limited partnership

  
By: Lincoln Property Holdings, Ltd. General partner  
By Edward Chang, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF SUMMIT )

Subscribed and sworn to before me this 9<sup>th</sup> day of July, 2007 by Edward Chang as President of Lincoln Property Holdings, Ltd., general partner in OCCEE PROPERTIES LIMITED PARTNERSHIP, a Colorado limited partnership.

Witness my hand and official seal  
My Commission expires:



*Robin Z. Auld*

**EXHIBIT A**  
**ALLOCATED INTEREST**  
**IN COMMON EXPENSES**

UNIT NUMBER	SQUARE FOOTAGE OF UNIT	COMMON EXPENSE ALLOCATION PERCENTAGE
101	1938	3.86%
102	1603	3.19%
103	1603	3.19%
201	1938	3.86%
202	1603	3.19%
203	1603	3.19%
204	1383	2.75%
205	2766	5.51%
206	996	1.98%
207	1019	2.03%
208	1603	3.19%
209	1604	3.19%
210	1978	3.94%
301	1938	3.86%
302	1603	3.19%
303	1482	2.95%
304	1383	2.75%
305	2766	5.51%
306	996	1.98%
307	1019	2.03%
308	1603	3.19%
309	1603	3.19%
310	1978	3.94%
404	2250	4.48%
405	2766	5.51%

406	996	1.98%
407	1019	2.03%
408	1603	3.19%
409	1603	3.19%
410	1978	3.94%
	50223	100.00%

- Square footage is based upon the area of the Unit as measured by the surveyor on the Map and is calculated from outside of the exterior wall to the middle of the interior walls.
- Common Expense liability is prorated based on the total amount of residential living space excluding common elements.

**EXHIBIT B**  
**RECORDED EASEMENTS**

1. Right of Way Easement granted to Public Service Company of Colorado recorded December 2, 1970 in Book 203 at Page 771 as Reception No. 118414
  
2. Bike Path Easement Agreement recorded September 23, 1992 as Reception No. 429051.
  
3. Mountain Meadows Easement Grant and Cost Sharing Agreement recorded February 18, 2005 as Reception No. 783077.