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**El Paso County Clerk & Recorder: Index in Grantee Indexes under Daniels Loft Condominiums and Daniels Loft Condominium Owners Association, Inc., and in Grantor Index under Daniels Loft, LLC, a Colorado limited liability company**

DECLARATION

FOR

DANIELS LOFT CONDOMINIUMS

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**CONDOMINIUM DECLARATION  
FOR  
DANIELS LOFT CONDOMINIUMS**

THIS DECLARATION, made as of the date written below by DANIELS LOFT, LLC, a Colorado limited liability company, hereinafter called "Declarant," for itself, its successors and assigns:

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property located in the County of El Paso, State of Colorado, which real property is described in Exhibit "A" attached hereto (hereinafter called the "Property"); and

WHEREAS, Declarant desires to create a condominium project on the Property pursuant to the provisions of the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-101, et. seq., hereinafter called "CCIOA") of the State of Colorado and the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby submits the Property together with all appurtenances, facilities, and improvements thereon to condominium ownership pursuant to the CCIOA, any other applicable statutes and laws and this Declaration, and Declarant hereby imposes upon the Property the following terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which are for the purpose of protecting the value and desirability of the Property and which shall be deemed to run with the Property and any real property and improvements hereafter added to the Project and shall be a burden and a benefit to Declarant, its successors, assigns and any person or entity acquiring, using, occupying, or owning any right, title or interest in the Property or any part thereof or any part of any added property, and any person entering or physically affecting the Property or any part thereof, and the grantees, Guests, successors, heirs, executors, administrators, devisees or assigns of any person or party described above.

I  
DEFINITIONS

The terms used herein shall have the meanings stated in the CCIOA, except as otherwise provided herein:

Section 1.1 "Association" means the Daniels Loft Condominium Association, Inc., a Colorado nonprofit membership corporation, its successors and assigns. Except as specified herein, the Association shall act by and through its Board of Directors.

Section 1.2 "Board" means the Board of Directors of the Association, and shall also be the "executive board" as defined under the CCIOA. Except as specified herein, or in the Association's Articles of Incorporation or Bylaws or C.R.S. 38-33.3-303(3), or except as otherwise specified in other provisions of CCIOA, the Board may act on behalf of the Association without any vote or consent of the Members.

Section 1.3 "Building" means a separate building improvement located upon the Property and consisting of one or more floors to be used for residential and commercial purposes, having access to a public street, and containing one or more individual Units .

Section 1.4 "Common Elements" means and includes all of the Property, and all of the improvements thereto and thereon located, excepting all Units as the same are herein defined. These terms shall have the same meaning as "common elements" under the CCIOA and may be reallocated pursuant to C.R.S. 38-33.3-205(1)(g) and 208. Common Elements shall consist of the General Common Elements and the Limited Common Elements, which are defined as follows:

A. "General Common Elements" means a part of the Common Elements and includes by way of illustration and not limitation any of the following to the extent located within the Project: the real Property described on Exhibit "A", the foundations, columns, girders, beams, supports, main walls, chimneys, roofs, common stairs and stairways, common landscaping, installations of central services such as electricity, water, common utilities, and related tanks, pumps, motors, fans, compressors, elevator, pipes, and lines, common sidewalks, private roads and streets located within the Condominium Project, and in general all property, apparatus and installations existing for common use or normally in common use including, without limitation, the air space above the Property which is not within the respective Condominium Units. General Common Elements shall include all tangible physical properties of this Project, except Limited Common Elements and the Units. No part of the General Common Elements may be conveyed to any person or entity except as specifically provided in this Declaration and except that the Association may lease certain areas designated as General Common Elements.

B. "Limited Common Elements" means those portions of the Common Elements which are either limited to and reserved for the exclusive use and enjoyment of an Owner or limited to and reserved for the common use of more than one, but fewer than all, of the Owners, which may include by way of illustration and not limitation, any items described in C.R.S. 38-33.3-202 and any of the following which are specifically designated on the Condominium Map or supplement thereto as being Limited Common Elements: garages, storage areas, parking spaces, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, private yards, private sidewalks and driveways, all exterior doors and windows or other fixtures designed to serve a single unit, even if located outside the unit's boundaries, attics, crawl spaces or any other area, item or mechanical equipment designated for the exclusive use of a Unit. Limited Common Elements may be designated as being appurtenant to a particular Condominium Unit either by the



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Condominium Map or supplement thereto or by any deed or other conveyance of a Condominium Unit from Declarant or by other assignment by Declarant under this Declaration or under the CCIOA, but shall not be thereafter severed from the Condominium Unit to which they are assigned; provided, however, any unassigned parking areas and/or storage areas may be assigned by the Board in its reasonable discretion after the Period of Declarant Control.

Section 1.5 "Common Expenses" means and includes (i) expenses of administration, maintenance, repair or replacement of the Common Elements; (ii) expenses declared common expenses by the Association; (iii) all sums lawfully assessed against the Condominium Units by the Board of Directors of the Association; and (iv) expenses agreed upon as common expenses by the Owners.

Section 1.6 "CCIOA" means the Colorado Common Interest Ownership Act (C.R.S. 38-33.3-101, et seq.), as such act is now enacted and hereafter revised, modified and amended.

Section 1.7 "Condominium Unit" means one Unit together with the undivided interest in the Common Elements appurtenant to such Unit, all fixtures and improvements therein contained, and all other appurtenant rights.

Section 1.8 "Declarant" means Daniels Loft, LLC, a Colorado limited liability company, its agents, employees, successors and assigns, to whom it specifically transfers all or part of its rights as Declarant hereunder, in compliance with C.R.S. 38-33.3-304. The Declarant hereby reserves upon the Property for the maximum time allowed by law, statute or set forth herein, any and all "special declarant rights" and "development rights" as created or set forth in the CCIOA and any other rights as set forth herein. Any such rights shall apply to the Property and shall terminate upon the earlier of seven (7) years from the date of the recording hereof or as otherwise provided herein. Any special declarant rights may be transferred as provided by C.R.S. 38-33.3-304. The "Period of Declarant Control" means that period during which the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board as set forth in Section 8.3(B) hereof.

Section 1.9 "Declaration" means this Amended and Restated Condominium Declaration as contained herein and as it may be amended or supplemented from time to time as herein provided, which shall be indexed in the grantee's index in the name of Daniels Loft Condominiums and under the Association and in the grantor's index in the name of the Declarant executing the Declaration.

Section 1.10 "Guest" means any agent, employee, guest, contractor, licensee or invitee of an Owner.

Section 1.11 "Map" or "Condominium Map" means the engineering drawings and survey containing the information required in Article II of this Declaration and recorded as required by said Article. Either term shall include the original and all supplemental maps, if any.

Section 1.12 "Member" shall mean and refer to every person or entity who holds membership in the Association or, following termination of the Project, of all former unit owners entitled to distributions of proceeds under C.R.S. 38-33.3-218, or their heirs, personal representative, successors or assigns.

Section 1.13 "Mortgage" means and refers to any mortgage, deed of trust or other assignment or comparable security instrument recorded in the records of the office of the Clerk and Recorder of El Paso County, Colorado, and by which a Condominium Unit or any part thereof is encumbered. The term shall include a "security interest" as defined by the CCIOA.

Section 1.14 "First Mortgage" means and refers to the unpaid and outstanding Mortgage, having priority of record over all other recorded encumbrances and liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 1.15 "Mortgagee" means any person or other entity or any successor to the interest of such person or entity named as the mortgagee, trust beneficiary, or creditor under any recorded mortgage, deed of trust, or other security instrument by which a Condominium Unit or any interest therein is encumbered. First Mortgagee shall mean the holder of a First Mortgagee.

Section 1.16 "Owner" means any person, corporation, partnership, association, contract sellers or other legal entity or any combination hereof, including Declarant, who owns the record fee simple interest in one or more Condominium Units. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any Owner but shall not refer to any Mortgagee as herein defined, or other person or entity having an ownership interest in any Condominium Unit merely as security for the performance of an obligation, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. This term shall have the same meaning as "unit owner" under the CCIOA.

Section 1.17 "Owner's Proportionate Share" or "Proportionate Interest" means that percentage of the total which is equal to such Owner's fractional or percentage interest in the Common Elements, as set forth in Exhibit "B" attached hereto and incorporated herein by this reference and which is subject to adjustment in the event that the Project is expanded as herein provided. These terms shall have the same meaning as "allocated interests" under the CCIOA.

Section 1.18 "Property" means the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, together with any property subsequently annexed hereto.

Section 1.19 "Project" or "Condominium Project" means all Buildings and other improvements located on the Property and all rights, easements and appurtenances belonging thereto, and all of the undivided fee simple interest in the Property and shall include any real property subsequently annexed or added to the Project. These terms shall have the same meaning as "common interest community" under the CCIOA. The project is a "condominium" for purposes of the CCIOA.

Section 1.20 "Unit" means an individual air space which is contained within any enclosed room or room occupying part of a floor or floors in a Building to be used for residential or commercial purposes and having access to a public street and bounded by the unfinished interior surfaces of the perimeter walls, floors and ceilings, and also bounded by the unfinished interior surfaces of windows, doors and built-in fireplace flues, if any, all in their closed position. If two or more Units adjoin each other, the adjoining walls, floors and ceiling shall be deemed to be perimeter. The term shall include all fixtures, built-in cabinets, built-in appliances, and improvements which are contained within a Unit and which comprise part of the Building, together with all interior non-bearing walls within the Unit and the inner decorated and/or finished surfaces of perimeter walls, floors and ceilings, including without limitation, plaster, paint, wallpaper and carpet. The term does not include any of the structural components for the Building, if any, located within the Unit, any utilities running through the Unit that serve more than one Unit, or any other Common Element or part thereof located within the Unit. This term shall have the same meaning as "unit" under the CCIOA. The boundaries of any Unit may be relocated pursuant to C.R.S. 38-33.3-212. The boundaries of the Units shall be shown on the recorded Map which shall be incorporated herein by this reference.

Section 1.21 "Unit Assessment" means an assessment against a particular Owner and his Condominium Unit as more particularly described in Article XI hereof.

## II

### CONDOMINIUM MAP AND REVOCATION

Section 2.1 Recording. The Map of the Property and the improvements is filed for record on 12-10-2001 in Reception No. 201180275 of the real property records of the office of the Clerk and Recorder of El Paso County, Colorado, and the Map, as recorded, is incorporated herein by this reference.

Section 2.2 Contents. Each such map or supplement shall clearly and legibly depict and show at least the following: the legal description of the land and a survey thereof; the location of the Building in reference to the exterior boundaries of the Property; the floor and elevation plans; the location of the Units within the Building, both horizontally and vertically; the thickness of the common walls between or separating the Units; the location of any structural components or supporting elements of the Building

located within a Unit; the Condominium Unit designations; the designations of the Limited Common Elements, and the certification of an independent registered land surveyor stating that the Map contains all the information required by C.R.S. 38-33.3-209 and 38-51-106 and that it substantially depicts the location and the horizontal and vertical measurements of the Units, the Unit designations, the locations of the General and Limited Common Elements and the elevations of the constructed unfinished floors and ceilings of the Units as established from a datum plane and an affirmation that such Map was prepared subsequent to substantial completion of the improvements shown thereon in accordance with the plans. Reference to the Map shall include its recorded contents, together with any amendment or supplement thereto. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries. Declarant reserves the right to amend the Map, from time to time, without the consent of the Owners being required, to conform the same according to the actual location of any of the improvements and to establish, assign, vacate and relocate easements, access roads, on-site parking spaces, garages and/or storage spaces. Declarant's right, as hereinabove set forth, shall terminate on the conveyance by Declarant of all Condominium Units within the Project, or until seven (7) years from the date of the recording hereof, whichever occurs first.

### III

#### NATURE OF OWNERSHIP

Section 3.1 Division of Property into Condominium Units. The Property is hereby divided into separate Condominium Units as shown on the Map and Exhibit "B" hereto, each consisting of a separate fee simple estate in a Unit, an appurtenant, undivided Proportionate Interest as tenant in common in and to the Common Elements, and all rights appurtenant thereto, but subject to adjustment by the Declarant as provided herein. Ownership of the Common Elements is shown on Exhibit "B" as Owner's Proportionate Interest/Proportionate Share and is allocated on the basis of the Declarant's sole determination of approximate square footage of a Unit as compared to the Declarant's sole determination of approximate square footage of all Units in the Project, including any Units created or added by expansion or further subdivision of the Project.

Section 3.2 Inseparability of a Condominium Unit. Each Unit, together with the undivided proportionate Interest in the General Common Elements and the Limited Common Elements appurtenant thereto, and all other rights appurtenant thereto, shall be inseparable and may be conveyed, leased, devised, sold, transferred, or encumbered only as a Condominium Unit.

Section 3.3 Nonpartitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners as tenants in common and shall remain undivided. No Owner, group of Owners or the Association shall bring any action for partition or division thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Condominium Project, and each Owner hereby expressly waives any and all such

rights of partition he may have by virtue of his ownership of a Condominium Unit. Nothing contained herein shall be construed as a limitation of the rights of Declarant herein or the right of legal partition of a Condominium Unit between the Owners thereof, but such legal partition shall not affect any other Condominium Unit, nor shall any such partition sever any part thereof from such Condominium Unit as a whole.

Section 3.4 Separate Taxation. All taxes, assessments and other charges of the State of Colorado or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately and not on any Building or the Project as a whole, and each Condominium Unit shall be carried on the tax books as a separate and distinct parcel. For the purpose of valuation for assessment, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the fractional undivided Proportionate Interests in Common Elements appurtenant to and part of the Condominium Units. The Association or the Declarant shall deliver to the County Assessor of the County of El Paso, Colorado, any written notice required by the CCIOA, setting forth descriptions of the Condominium Units and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessment. The lien for taxes assessed to any Condominium Unit shall be confined to that Condominium Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. In the event that such taxes or assessments for any year are not separately assessed to each Owner, but rather are assessed on the Property as a whole, then each Owner shall pay his Proportionate Share thereof in accordance with his ownership interest in the General Common Elements, and, in said event, such taxes or assessments shall be a Common Expense. Without limiting the authority of the Board provided for elsewhere herein, the Board shall have the authority to collect from the Owners their proportionate share of taxes or assessments for any year in which taxes are assessed on the Property as a whole.

Section 3.5 Ownership-Title. A Condominium Unit may be held and owned by more than one person as joint tenants or as tenants in common, or in any real property tenancy relationship recognized under the laws of the State of Colorado. Each such Owner shall have and be entitled to the exclusive ownership and possession of his Unit, subject to the provisions of this Declaration and said laws.

Section 3.6 Use of Common Elements. Subject to the restrictions contained in this Declaration, including without limitation the rules and restrictions described in Section 9.8, and without hindering or interfering with the lawful rights of other Owners, each Owner, his family members, Guests, and tenants shall have the non-exclusive right to use and enjoy the General Common Elements for the purpose for which they are intended, and shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to that Condominium Unit and designated for exclusive use by such Owner.

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Section 3.7 Charges for Use. Except for the assessments and other sums set forth herein, no Unit Owner shall be required to pay any additional fees or charges in connection with such Owner's use of any of the Common Elements existing at the recording of this Declaration; provided, however, the Association may undertake on a contractual basis any activity, function or service, for the benefit of all, some or any Owners who agree to pay therefor, separate and apart from the assessments hereunder.

Section 3.8 Common Facilities. Certain facilities within the Project and/or certain areas within the Common Elements may be subject to designation by the Declarant for limited or special uses, rules and/or individual or special charges; any such designation and the terms thereof shall be recorded by the Declarant prior to the expiration of the Period of Declarant Control.

Section 3.9 Relocation of Unit Boundaries And Subdivision of Units. The boundaries between adjoining Units may be relocated as provided by C.R.S. 38-33.3-212. Any Unit may be subdivided by the Declarant into two or more units pursuant to C.R.S. 38-33.3-213.

Section 3.10 New Additions to the Existing Common Elements. If the Declarant or the Association makes any new additions to the General and Limited Common Elements existing within the Project, now or hereafter, then, a) each Owner would be responsible for his percentage of any increase in Common Expenses created thereby, b) each Owner would own, as a tenant in common with the other Owners, an undivided interest in the new additions in accordance with his Proportionate Interest, c) each Owner's interest in the existing General and Limited Common Elements would be unaffected by such additions, and d) each Owner's voting powers in the Association would be unaffected by such additions.

#### IV

#### DESCRIPTION, TRANSFER AND CONVEYANCE OF A CONDOMINIUM UNIT

Section 4.1 Description. Every deed, lease, mortgage, trust deed, will or other instrument affecting that Condominium Unit, shall describe that Condominium Unit in the following manner, with appropriate insertions, and if applicable, with additional references to any amendments or supplements to this Declaration or the Map, and may include references to areas designated as Limited Common Elements:

Condominium Unit \_\_\_\_\_, DANIELS LOFT CONDOMINIUMS, according to the Declaration thereof filed for record in the records of the office of the Clerk and Recorder of El Paso County, State of Colorado on 12-10-2001, in Reception No. 201180275, and as defined and described in the Condominium Map for Daniels Loft Condominiums recorded on 12-10-2001, in Reception No. 201180276, in said records.

Section 4.2 Transfer. Every instrument affecting title to or interest in a Condominium Unit which describes it in the manner set forth above, shall be good and sufficient for all purposes to sell, convey, transfer, assign, encumber or otherwise affect not only that Unit, but also, without requiring specific reference thereto, the undivided interest in the General Common Elements and the Limited Common Elements appurtenant thereto and all other appurtenant property rights and interests, together with all easements and all fixtures and improvements therein contained, and to incorporate all of the rights, easements, limitations, and burdens incident to ownership of a Condominium Unit as provided in this Declaration and the Condominium Map; Declarant may assign any Limited Common Element, which is not assigned by the Condominium Map or by separate recorded document, by adding its description to the legal description set forth in Section 4.1 above; all of which shall be incorporated in this Declaration by this reference; parking spaces in the garage and/or storage areas in the basement may also be sold, conveyed, or assigned by Declarant by separate conveyance or recorded document.

Section 4.3 Amendments and Supplements. The reference to the Map and Declaration in any instrument shall be deemed to include any supplements or amendments to the Map or Declaration without the necessity for specific reference(s) thereto.

## V EASEMENTS

Section 5.1 Recorded Easements and Covenants. The Property, and all portions thereof, shall be subject to all recorded licenses and easements including without limitation any as shown on any recorded plat affecting the Property, or any portion thereof, and as shown on the Condominium Map; additionally, the recording data for recorded easements and licenses appurtenant to or included in the Project, or which any portion of the Project is or may be subject by virtue of a reservation in the Declaration, as may be shown on Exhibit "C" attached hereto and incorporated herein by this reference. The Association and Owners hereby covenant and agree to be bound by all easements, licenses, exceptions, covenants and additional covenants as described in this Declaration and as shown on Exhibit "C" hereto, and to release and indemnify Declarant, its successors and assigns, from any claims or liability thereunder.

Section 5.2 Ingress and Egress and Support. Subject to the provisions of this Declaration, each Owner, his family members, Guests and tenants shall have a perpetual non-exclusive easement for the purpose of vehicular and pedestrian ingress and egress over, upon, and across the General Common Elements necessary for access to that Condominium Unit, to public or private streets, and to the Limited Common Elements designated for use in conjunction with that Condominium Unit, and each Owner shall have the right to the horizontal and vertical support of his Unit.

Section 5.3 Association Use. The Association, its officers, agents and employees shall have a non-exclusive easement to make such use of and to enter into, upon, across, under or above the General Common Elements as may be necessary or appropriate to perform the duties and functions which it is permitted or required to perform pursuant to this Declaration or otherwise, including but not limited to the right to construct and maintain on the Common Elements any maintenance and storage facilities for use by the Association.

Section 5.4 Repairs - Ordinary and Emergency. If any Common Elements are located within a Unit, or are conveniently accessible only through a Unit, the Association, its officers, agents or employees, shall have the right to enter such Unit after service of reasonable written notice and during regular business hours, for the inspection, maintenance, repair and replacement of any of such Common Elements or after service of such notice, if any, as is reasonable under the circumstances, at any time as may be necessary for making emergency repairs to prevent damage to the Common Elements or to another Unit or Units. Damage to any part of a Unit or Units resulting from the above-described repairs or any damage caused to a Unit by the Common Elements located outside of the Unit, including without limitation, broken water pipes, sewer lines or other utilities, shall be a common expense of all of the Owners, unless such damage is the result of the misuse or negligence of the Owner, his family, his tenants or his Guests, in which case such Owner shall be responsible and liable for all of such damage and may be charged for any cost thereof by special assessment. No diminution or abatement of assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of the above-described repairs or from action taken to comply with any law, ordinance or order of any governmental authority. Damaged improvements, fixtures or personality shall be restored to substantially the same condition in which they existed prior to the damage.

Section 5.5 Encroachments. If any part of the Common Elements encroaches upon a Unit or Units, a valid easement for such encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the Common Elements, or upon any adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event that a Building or Condominium Unit is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Common Elements due to such construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building or Unit constructed on the Property, by error in the Condominium Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Such encroachments and easements shall not be considered or constructed to be encumbrances either on the Limited or General Common Elements or on the Condominium Units. In interpreting any and all provisions of this Condominium Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Condominium Units, the actual location of a Condominium Unit shall be deemed conclusively



to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Condominium Unit as indicated on the Condominium Map.

**Section 5.6 Utilities.** Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Property, the Common Elements and/or the roofs or walls of any Building for the purpose of installing, maintaining, repairing and replacing any utilities, including but not limited to gas, electric, water, sewer and telephone and cable television lines, any heating or cooling installations, any cable, telephone, or master television antenna system (but subject to approval or termination by the Board after the Period of Declarant Control) and any other necessary and related facilities. The water and sewer lines located in the General Common Elements shall be private lines maintained by the Association through the assessments described herein and controlled by the Board. The foregoing easements shall include the right of ingress and egress and the right to erect and maintain the necessary pipes, wires, lines, poles and other equipment. Should any person or party furnishing a service covered by the general easement hereinabove described request a specific easement by separate recordable document, Declarant shall have the right to grant such easement without conflicting with the terms hereof. The foregoing easements shall not affect any other recorded easement on the Property, including but not limited to any easements granted in the Condominium Map. The right reserved herein for Declarant shall pass automatically to the Board upon Declarant's sale of the last Condominium Unit within the Project or seven (7) years from the date of recording of this Declaration, whichever occurs first. Furthermore, easements are hereby declared and granted to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the Common Elements and the walls of the Units whether or not such walls lie in whole or in part within the Unit boundaries.

**Section 5.7 Reservation for Declarant's Further Development.** To the fullest extent authorized or permitted by law or statutes, Declarant, for itself and its assigns, shall have the easement and right to ingress and egress over, under, across and through the Property and the Common Elements and the right to store materials thereon and to make such other reasonable use thereof as may be necessary to complete the Project, to provide access or utilities, or to change, correct, install or construct such drainage facilities or modification of drainage, to construct and assign as Limited Common Elements, any garages, carports, parking spaces, patios, storage areas, privacy fences or other improvements, or to exercise any development right or any special Declarant rights hereunder or under the CCIOA, as may be necessary in Declarant's reasonable discretion, except that such use may not unreasonably interfere with the Owners' use and enjoyment of their Condominium Units and the Common Elements, nor with their rights of ingress and egress to their Units from a public or private street. The Declarant shall have the right to execute or record or both any writing or document necessary or advisable to confirm, implement or transfer the rights reserved in this Section 5.7 or otherwise in this Declaration; the rights set forth in this Section 5.7 shall terminate upon the earlier of seven (7) years from the date of the recording of this

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Declaration or upon Declarant's sale of the last Condominium Unit within the Project, whichever occurs first.

Section 5.8 Public Servants and Emergencies. Subject to the provisions of this Declaration, a non-exclusive easement is further granted to all police, sheriff, fire protection, ambulance and all similar persons to enter upon the streets, Common Elements, and the Project in the proper performance of their duties.

Section 5.9 Easements Deemed Created. The easements, uses and rights herein created for an Owner shall be deemed appurtenant to the Unit of that Owner, and all conveyances of Condominium Units hereafter made, whether by Declarant or otherwise, shall be construed to grant or reserve the easements, uses and rights set forth herein, even though no specific reference to such easements or this Declaration appears in the instrument for such conveyance.

## VI

### MECHANICS' LIENS

Section 6.1 Mechanics' Liens - Association Work. Labor performed, or services or materials furnished for the Common Elements, if duly authorized by the Board, shall be deemed to be performed or furnished at the express consent of each Owner, provided, however, any Owner may remove his Condominium Unit from any such lien against the Project or against two or more Condominium Units, or against the Common Elements or a portion thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien, based upon the percentages shown in Exhibit "B", and the Board shall have no authority to bind the Owners beyond their pro rata share as provided above.

Section 6.2 Mechanics' Liens - Owner Work. In the event a lien arises from work or material furnished for use and incorporated in any Unit with the consent of or at the request of the Owner thereof or his agent or his contractor or subcontractor, and not requested by the other Owners or the Board, such Owner shall indemnify, defend and hold harmless all other Owners and the Association from, and against any liability or loss arising from the claim of any such lien. In no event shall the claim of any such individual lien be the basis for the filing of a lien against a Condominium Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Condominium Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished; the filing of any such lien against the Condominium Unit of a non-consenting Owner or against the non-consenting Owner's interest in the Common Elements shall, to the extent permitted by law, be null and void and shall entitle such Owner or the Association to recover damages and expenses, including without limitation attorneys' fees, from the lienor.

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Section 6.3 Other Liens. As required by the CCIOA, Declarant hereby states that it is possible that additional liens, other than mechanics' liens, assessment liens or tax liens, may be obtained, to the extent permitted by law and by this Declaration, against the Common Elements. To the extent permitted by law, all liens shall be subject to the covenants, terms and provisions of this Declaration.

## VII USE RESTRICTIONS

Section 7.1 Permitted Uses. The Declarant shall designate on the Condominium Map those Units which shall be used and occupied solely for residential purposes ("Residential Units") and those Units which shall be used solely for commercial purposes ("Commercial Units"). The definitions of residential and commercial shall be in accordance with the applicable Colorado Springs zoning laws and regulations. Each Residential Unit shall be used and occupied solely for residential purposes as a private dwelling for the Owners and members of his family and guests, and no Residential Unit shall be used for any commercial business, manufacturing, or other profit-making purpose whatsoever, providing, however, if the appropriate zoning so allows and if prior written approval of the Board is obtained, an Owner may use all or part of that Owner's Unit for reasonable office purposes, and provided further that a Residential Unit may be leased for residential purposes subject to compliance with this Declaration. The Board, may in its reasonable discretion, restrict the maximum number of persons who are permitted to occupy any Residential Unit.

Commercial Units shall be used solely for business, office, retail, or commercial purposes as allowed by the appropriate zoning laws and ordinances of the City of Colorado Springs; Commercial Units shall not be used for residential purposes unless prior written approval is obtained from the Board of Directors, in its sole discretion.

Section 7.2 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Common Elements, nor shall an addition to, or change or alteration thereto or to any Unit be made until the plans and specifications showing the nature, shape, height, material and location of the same shall have been submitted to and approved in writing by the Board as to harmony of external design and location in relation to surrounding structures and topography. In the event the Board fails to approve or disapprove such plans and specifications within sixty (60) days after they have been submitted to it and have been receipted in writing by the Association's President, approval will not be required and this Section will be deemed to have been fully complied with. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-buildings shall be used on any portion of the Property at any time as a residence, either temporarily or permanently, except as otherwise provided herein or with the Board's prior written approval. No Owner shall undertake any work in his Unit which would jeopardize the soundness or safety of the Building or the Project, reduce the value thereof or impair an easement thereon or thereto, nor shall any Owner enclose, by means of screening or otherwise, any Common Element including without limitation, any yard, balcony, patio or porch which is accessible from, associated

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with and which adjoins a Unit, without having first obtained the prior written approval of the Board with respect to the materials, design and specifications for such enclosure, as more particular provided in this paragraph. Structural alterations or changes in exterior appearance of a Building or both shall not be made by an Owner to the Building or in the water, gas or steam pipes, electric conduits, plumbing or other fixtures connected therewith, nor shall an Owner remove any additions, improvements or fixtures from the Building without the prior written consent of the Board first having been obtained. The Board may regulate the color and appearance of draperies, shades, blinds and other window coverings to provide a uniform and attractive appearance.

Section 7.3 Common Elements. The Common Elements shall be used for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment of the Owners, their families, tenants and Guests. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. The Common Elements, including without limitation all improvements thereon, shall not be altered, constructed upon, or removed except upon the consent of the Board. The Board may adopt rules governing the use of the Units and the Common Elements, and each Owner, by the acceptance of his deed and other instrument of conveyance or assignment agrees to be bound by any such adopted rules and to insure compliance by his or her family and Guests. No Owner shall enter any meter rooms, mechanical equipment areas, crawl spaces, or attic areas, even if designated as General Common Elements, without the prior written approval of the Board or without the presence of an authorized representative of the Board or of the managing agent.

Section 7.4 Prohibitions.

A. Nothing shall be done or kept in any Unit, or in the Common Elements, or any part thereof, which would result in the cancellation of any insurance on the Project, or in an increase in the rate of any insurance on the Project, without the prior written consent of the Board. No part of the Project or of any Condominium Unit shall be used in any way or for any purpose which may endanger the health, safety or life of any person. No activities shall be permitted upon any portion of the Project which will violate the provisions of any applicable statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No nuisance shall be allowed upon the Property, nor shall any use or practice be allowed which is a source of annoyance to residents, or which interferes with the peaceful possession and proper use of the Property by its residents. No damage to or waste of the Common Elements, or any part thereof, or any Unit, shall be committed by any Owner, or any Guest of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against any loss resulting from any such damage or waste caused by him, the members of his family, Guests or tenants. The Board may prohibit or regulate barbecue equipment on decks or balconies unless such equipment uses propane or installed natural gas line and does not result in any violation of municipal fire codes.

B. No excessive noise or disturbance shall be allowed upon the Property, provided, however, all Owners understand and agree that certain normal sounds may penetrate the common walls between the Units and it is not uncommon in close living situations, such as condominiums, for persons to hear noises from other Condominium Units or outside noises, such noises and sounds tend to carry through pipes, air conditioning, heating, wood studs and floorings; that sound transmission is highly subjective, and is not uncommon in close living situations, but is expected; neither the Association nor the Board nor the Declarant shall have any liability or responsibility for such sounds, and provided further, that customary sounds and noises from commercial activities in the Commercial Units shall not be prohibited.

Section 7.5 Animals. No horses, dogs, cats, snakes, fish, insects, birds, reptiles, cattle, sheep, goats, pigs, rabbits, poultry or similar pets or other animals of any description shall be kept or maintained within the Project except that this Section shall be subject to applicable federal, state, or local laws and except that Owners may keep, if permitted by rules of the Board, reasonable numbers of bona fide household pets, which are not kept for commercial purposes, do not make objectionable noises or otherwise constitute a nuisance or inconvenience to any of the residents of adjacent property, and are kept in compliance with all applicable local ordinances and any rules of the Board. An Owner, family member, tenant or Guest is responsible for any damage caused by his pet and shall be obligated to clean up after his pet while it is on the Property. Dogs, if permitted by the Board, shall be kept on leash and attended by their owners at all times. The Board may institute such rules as it deems advisable for the control, restriction, or complete elimination of any pets and may impose such fines as are necessary, in its sole discretion, to enforce such rules and this Declaration.

Section 7.6 Storage and Related Restrictions. No object or material shall be stored in such a manner so as to be visible from another Unit or from the street, unless prior approval is obtained from the Board or unless in a Commercial Unit. Patios and balconies shall not be used as storage areas. Clothing, bedding or similar items shall not be displayed on any patio or balcony area or in open view. The conversion or alteration of garages into living areas, storage areas, workshop areas, or any other modification or alteration of the garages which would hinder, preclude or prevent the parking of the number of vehicles for which garage was originally designed, is hereby prohibited unless the prior written consent of the Board is obtained. Garage doors, if any, shall be kept closed at all times except when in immediate use for ingress or egress of motor vehicles and except when in immediate use for access to public utility meters which shall not be obstructed in any way whatsoever.

Section 7.7 Maintenance. Each Owner shall keep the interior of his Unit and the Limited Common Elements appurtenant thereto in a clean, sanitary and attractive condition and in a good state of repair. Garbage and trash shall be kept in receptacles solely within the Unit and then placed in the common trash receptacle. All rubbish, trash or garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. The Board may, in its discretion, enter into agreements or arrangements for common trash and garbage removal from all Condominium Units.

Section 7.8 Outside Structures. Except for the Commercial Unit, no exterior television or radio antenna, satellite dish, tower or similar structure of any sort shall be placed, allowed or maintained upon any portion of the improvements located upon the Property, without the prior written consent of the Board, which may allow an Owner to install upon that Owner's Limited Common Elements, one (1) small satellite dish, not exceeding thirty (30) inches in diameter or other device specifically authorized by the Federal Telecommunications Act of 1996, so long as such dish or device is for the personal use of the owner, complies with all zoning and building codes, does not cause any damage to the Project, does not increase insurance costs nor constitute any nuisance or interference to other Owners, does not otherwise violate this Declaration or the Association's rules. Any such dish or device shall be subject to the architectural review of the Board prior to installation to the fullest extent permitted by law and statute.

Section 7.9 Leasing of Residential Condominium Units. No Residential Unit shall be occupied or rented for time-sharing, transient or hotel purposes, which shall be defined as (a) occupancy or rental for any period less than 30 days; or (b) any rental if the occupants are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, an Owner shall have the absolute right to lease his Residential Unit for private residential, living or sleeping purposes and office use with prior Board approval and pursuant to the following conditions: (a) the initial term of any lease or other tenancy shall be at least six (6) months in duration; (b) no Owner may lease less than his entire Residential Unit, (c) all leases shall be in writing, and (d) all leases shall provide that the terms of the Lease, and Lessee's occupancy of the Condominium Unit, shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the rules of the Board and that any failure by the lessee to comply therewith shall be a default under the lease. The Board may require that an Owner of a Residential Unit use an approved form of lease, submit a copy of each lease to the Board, and enforce it against his tenant.

Section 7.10 Parking. There shall be no parking of automobiles, trucks or vehicles of any type upon any part of the Project, including without limitation any private streets, except as shown for parking on the Condominium Map or assigned or permitted by the Declarant during the Period of Declarant Control and thereafter by the Association's Board; violation of this provision shall permit the Board or any Owner to remove the offending vehicle at the expense of the owner thereof. No commercial vehicles, campers, trailers, or vans shall be stored on or otherwise parked on any part or any road within the Project except when temporarily engaged in transport or unless parked in a carport, garage or area designated for such purpose by the Board. For the purpose of this Section, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck. Recreational vehicles or similar vehicles may not be parked in the Property unless the Board designates a specific area for such parking. No mechanical work shall be performed upon any vehicle located upon the Property unless permitted by the rules of the Board. The Board may regulate and restrict parking and traffic by rules, signs, permits or other means. The Board

may designate certain unassigned parking spaces or parking areas for the use of individual owners, Guests and visitors; any parking so designated shall not be used by any other persons.

**Section 7.11 Abandoned or Junk Vehicles.** No abandoned or junk vehicles or parts thereof shall be stored or parked upon any part of the Project, including but not limited to any alley or way of access within or adjacent to the Project, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned or junk vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or junk vehicle is not removed within 72 hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of fifteen (15) days or longer, as determined by the Board in its sole discretion. For the purpose of this section, a "junk" vehicle shall be defined in the Association's rules and as determined by the Board in its sole discretion.

**Section 7.12 Signs and Advertising.** No signs, advertising, displays, billboards, unsightly objects or nuisances shall be placed, erected or permitted to remain in or on any Residential Unit or any part of the Building, except the Commercial Units, provided, however, the Board may adopt rules which permit a "For Sale" or "For Rent" sign to be placed upon the interior of a window within an Owner's Unit or which permit other locational or identifying signs of reasonable size; notwithstanding the foregoing, the right is reserved by Declarant or its agents to place such signs of any size on the Property as may be required to facilitate the business of disposing of unsold Units and furthermore, the right is reserved for the Commercial Units to have signs and advertising which shall be regulated by the zoning laws of the City of Colorado Springs.

**Section 7.13 Exception for Declarant.** Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant, or any contractor involved in the construction of said Condominium Units, or in the development of the Project, to maintain during the period of construction and sale of said Units, upon such portions of the Project as the Declarant may choose, such uses and facilities as may be reasonably required, convenient or incidental to the construction, sale or rental of said Condominium Units, and to the development of the Project, including, but without limitation, use of the Property, including use of any clubhouse or meeting room, for sales office, management office and models and temporary parking and access facilities for prospective and actual tenants, occupants and purchasers, and Declarant may promptly remove any of the foregoing (except any clubhouse or meeting room) if Declarant ceases to be an Owner. The Declarant and contractors may maintain such management offices, signs, model units, construction offices, and sales offices in such numbers, size and locations, as they may determine in their reasonable discretion from time to time. The provisions of this Article VII shall not apply to such use or other construction and sales activities by the Declarant or its

contractors, except that such reasonable use by the Declarant or his contractors may not unreasonably interfere with the Owners' use and enjoyment of their Condominium Units and the Common Elements, nor with their right of ingress and egress to their Units from a public or private street. In addition, the Declarant, its agents, employees, financiers, or its contractors shall have such rights of ingress and egress over the Common Elements as in Declarant's discretion shall be necessary to complete the Project and additionally shall have any and all rights set forth in C.R.S. 38-33.3-215 and 216.

Section 7.14 Floors. The Owners acknowledge and agree that the floors consist of a wood surface which may result in sound transmission to neighbors below, and so Owners shall use reasonable efforts to prevent undue noise and shall not replace any flooring unless replaced with materials as originally installed by the Declarant or as approved by the Board.

Section 7.15 Drainage, Soils and Environmental Matters.

A. The Association shall maintain the drainage upon the Property in such a fashion that the soil surrounding the foundations of the Building and other improvements shall not become so impregnated with water that they cause expansion of or shifting of the soils supporting the improvements or other damage to the improvements and do not impede the proper functioning drainage. Such maintenance shall include, where necessary the removal or replacement of improperly functioning gutters, downspouts, or drainage elements and shall also include regrading and resurfacing where necessary to provide for adequate drainage and preventing any ponding or changes in such a way as to endanger the structural integrity or the stability of any of the walkways, walks, drainage, or other improvements upon the Property. The Association and the Owners shall indemnify the Declarant from any liability, claims and expenses, including without limitation, reasonable attorneys fees, resulting from any breach of this Section.

B. The Owners acknowledge and understand that soil, ecological and/or environmental conditions, including but not limited to, radon gas, hazardous or toxic substances, may affect this Property and that the Declarant does not warrant and disclaims any liability for any existing or future soil, ecological or environmental conditions affecting the Property, and that the soil in the Colorado area contains clay and other substances which may cause it to swell when wet and so can cause earth movement around a Building's foundation; the Owners accept the soil conditions, the foundations and the buildings so installed without any express or implied warranties or representations.

C. The U.S. Environmental Protection Agency ("EPA") states that exposure to elevated levels of radon gas can be injurious. Any test to measure the level of radon gas can only show the level at a particular time under the circumstances occurring at the time of testing. Declarant, its agents, contractors, successors and assigns are not qualified to measure radon gas or to evaluate all aspects of this complex area of concern. Prior or subsequent to closing of the Owner's purchase of the



Unit, the Owner may wish to test for the presence of radon gas and to purchase or install devices that may be recommended by qualified radon specialists. The Declarant, its agents, contractors, successors and assigns, expressly disclaim, and the Owner and the Association agree to waive and release the Declarant, its agents, contractors, successors and assigns, from any claims of liability or responsibility with respect to radon gas and related matters and to hold harmless from any claims or liability against the Declarant, its agents, contractors, successors and assigns with respect to radon gas and related matters.

D. Fiberglass insulation (also known as glass wool) and similar material are commonly used for insulation of buildings. Fiberglass in various thicknesses and values is used in the areas of walls, floor to ceiling assemblies and ceiling to roof assemblies of homes to prevent movement of heat and to reduce noise. The U.S. Department of Health and Human Services produced a report that lists glass wool as a substance "which may be reasonably anticipated to be a carcinogen", but that report merely identifies substances selected for further study because of potential risk. The listing of a substance in the report is not an assessment that there is casual connection between glass wool and illness. The Owners and the Association acknowledge that fiberglass is used in the wall and floor to ceiling assemblies, and waive any claims against the Declarant, its agents, contractors, successors and assigns, arising as a result of the use of fiberglass insulation, and agrees to hold Declarant, its agents, contractors, successors and assigns harmless from any claim or liability resulting from the existence of fiberglass insulation in the Unit or the Project.

E. The Association and the Owners agree to do nothing which would change the grading so as to cause or permit poor drainage or other damage to the Building, to accept the soil conditions, insulation, radon, ecological and environmental conditions, which now or hereafter exist on the Project, and to release and indemnify the Declarant from any loss, damage and expense resulting from any of the foregoing.

Section 7.16 Disclosures, Disclaimers and Releases. NO REPRESENTATION, PROMISE OR WARRANTY, HAS BEEN MADE BY DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES, THE INVESTMENT POTENTIAL OF THE UNIT, ANY ECONOMIC BENEFITS TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, RELATED TO THE OWNERSHIP OR RENTAL OF THE UNIT, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE UNIT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL PROPERTY IN THE AREA. THE

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OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE SIZES AND TYPE OF UNITS MAY CHANGE AT THE SOLE DISCRETION OF THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF THE DECLARANT.

BY ACQUIRING TITLE TO A UNIT, THE OWNERS, THEIRS HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT EXCEPT FOR ANY WRITTEN LIMITED WARRANTY, THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE, INCLUDING WITHOUT LIMITATION ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE UNIT, THE PROJECT, OR ANY COMMON ELEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS FROM ALL CLAIMS RELATED THERETO, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS OR ASSIGNS SHALL NOT BE LIABLE FOR CLAIMS RELATING TO THE UNIT OR TO THE COMMON ELEMENTS ARISING OR RELATING TO ANY DEFECT IN WORKMANSHIP OR IN ANY MATERIAL USED IN CONSTRUCTION UNLESS OTHERWISE PROVIDED IN A SPECIFIC WRITTEN LIMITED WARRANTY SIGNED BY THE DECLARANT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION, EXPRESSLY WAIVE AND RELEASE ALL RIGHTS TO SUE FOR A DEFECT IN CONSTRUCTION OF THE UNIT OR COMMON ELEMENTS OR BOTH AND SHALL RELY SOLELY ON THE OWNER'S OWN INSPECTION AND EXAMINATION OF THE PROJECT AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF THE DECLARANT, ITS AGENTS, CONTRACTORS, SUCCESSORS AND ASSIGNS. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE SALES PRICES OF THE UNITS ARE BASED IN PART UPON THE RELEASES, WAIVERS AND INDEMNITY CONTAINED IN THIS SECTION AND THE OTHER PROVISIONS OF THE DECLARATION.

Section 7.17 Arbitration of Disputes. Any action, dispute, claim or controversy between any person, entity, including without limitation, any Owner and/or the Association, and the Declarant, its

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agent, contractors, successors and assigns, whether sounding in contract, tort or otherwise, and whether or not concerning an individual Unit or the Common Elements may be submitted by the Declarant, at its option, to be resolved by binding arbitration as set forth in this Section and shall include all disputes arising out of or in connection with this Declaration, any construction of a Unit or Common Element, and any related agreements or instruments and any transaction contemplated hereby. If so submitted, such disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code, Colorado Uniform Arbitration Act, C.R.S. 13-22-201, et. sec., and the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). In the event of any inconsistency between such rules and these arbitration provisions, these arbitration provisions shall supersede such rules. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section. The parties shall be entitled to conduct discovery as if the dispute were pending in a court of law in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is especially empowered to decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Except as otherwise provided, the arbitrator selected under this Section shall be knowledgeable in the subject matter of the Dispute. Qualified retired judges or other experts shall be selected through panels maintained by AAA, any court in which the Unit is located or any private organization providing such services. If any claim regarding defects in construction is made, each claim shall be specified with particularity. Each location of any claimed defect must be identified and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided in advance of any request for arbitration.

## VIII

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 8.1 Membership. Every Owner shall automatically be a member of the Association and shall remain a Member until such time as his ownership of his Condominium Unit ceases. When more than one person holds title to a Condominium Unit, all such persons shall be Members of the Association, but such multiple or joint ownership shall not increase the voting rights allocable to such Unit. Membership in the Association shall not be transferred, except in connection with the sale or conveyance of a Condominium Unit. However, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit. Membership in the Association is not transferred when an Owner leases his Condominium Unit.

Section 8.2 Voting Membership. The Association shall have one class of voting membership who shall be the Owners. The Owners shall elect all the members of the Board, following the termination of Declarant Control as set forth in Section 8.3 below and as set forth in the Association's Articles of Incorporation and Bylaws.

### Section 8.3 Voting Rights.

A. Each Condominium Unit shall have the voting rights based upon the Owner's Proportionate Interest as set forth in the Declaration; the affirmative vote of a majority of the Proportionate Interests, at a duly called meeting having a quorum as set forth by the Bylaws, shall be required for decisions and action by the Association, unless otherwise provided herein or in the Declaration or Bylaws. If only one of the multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast all votes allocated to that unit. Alternatively, if more than one person holds an interest in a Condominium Unit, they may appoint one of their co-Owners as proxy to cast the vote for that Condominium Unit. The vote for such Condominium Unit shall be cast as the Owners holding a majority interest in thereof agree, but in no event shall they cast more than the voting rights allocated that Unit on any one question. If such Owners of such Condominium Unit cannot agree as to the manner in which their vote shall be cast when called upon to vote, then they will be treated as having abstained; during any such period, each Owner shall retain all other rights and obligations of membership in the Association.

B. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Directors as follows: During the Period of Declarant Control, the Declarant, or persons designated by him or her, subject to certain limitations, may appoint and remove the officers and members of the Board. The Period of Declarant Control shall commence upon the recording hereof and shall terminate no later than either sixty (60) days after conveyance of seventy-five (75%) percent of the Units, which may be created, to Owners other than a Declarant, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and Directors of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

C. Not later than sixty (60) days after conveyance of twenty-five (25%) percent of the Units, which may be created, to Owners other than the Declarant, at least one member, and not less than twenty-five (25%) percent of the members of the Board shall be elected by the Owners, other than the Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units, which may be created, to Owners other than a Declarant, not less than one-third (1/3) of the members of the Board must be elected by the Owners other than the Declarant.

D. Except as otherwise provided in Paragraph B of this Section, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners

other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon election or appointment as provided herein.

E. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a vote of Members holding at least sixty-seven percent (67%) of the Proportionate Interests present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

F. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C.R.S. 38-33.3-303(9).

## IX ASSOCIATION FUNCTIONS

Section 9.1 Management. Subject to Article X, the management and operation of the Project shall be by the Association which shall be organized and shall have all powers and fulfill its functions pursuant to this Declaration, the Articles of Incorporation, the Bylaws, the CCIOA, and all other applicable statutes and common law of the State of Colorado in effect from time to time. The Association shall act by and through its Board, its elected officers, and its agents and employees. The Board may take any action without any vote of the Owners or Members unless such vote is specifically required in this Declaration, the Articles of Incorporation, the Bylaws, or the rules.

Section 9.2 Association Powers and Responsibilities. The Association, subject to the rights and duties of the Owners as set forth elsewhere in this Declaration, shall be responsible for the management, control, operation, maintenance, replacement and repair of the Common Elements as more specifically provided herein.

Section 9.3 Property of Association. Subject to the provisions hereof, the Association may pay for, acquire and hold real and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the rules of the Association, each Owner and each Owner's family, tenant and Guests may use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective Proportionate Interests. The transfer of title to a Condominium Unit by sale, conveyance, foreclosure or procedure in lieu of foreclosure shall transfer to the purchaser, without the necessity of any reference thereto, the beneficial interest in such property associated with the Condominium Unit; such beneficial interest shall not be transferable except with the transfer of the Condominium Unit.

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Section 9.4 Association's Right to Lease and License General Common Elements. With the prior written consent of Owners entitled to vote sixty-seven percent (67%) of the votes allocated to Condominium Units sold by the Declarant, the Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-Owners, on either a short-term basis or long-term basis with or without charge, and upon such terms as the Association may deem desirable, all or any part of the General Common Elements.

Section 9.5 Restrictions Upon Association and Owners. Except as provided in Articles XV and XVI hereof and except as provided in C.R.S. 38-33.3-219, unless as least sixty-seven percent (67%) of the First Mortgagees of Units (based upon one [1] vote for each First Mortgage owned or held) and at least sixty-seven percent (67%) of the Owners, other than Declarant (based upon one [1] vote for each Condominium Unit owned), have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to:

- (i) by act or omission, seek to abandon or terminate the Project or the provisions hereof for architectural control and enforcement or for maintenance of the Common Elements as herein provided;
- (ii) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Condominium Unit in the Common Elements;
- (iii) partition or subdivide any Condominium Unit;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements apart from any Condominium Unit, except as provided by Section 5.6 hereof, but subject to C.R.S. 38-33.3-312; or
- (v) use hazard insurance proceeds for loss to Condominium Unit and/or Common Elements improvements for other than repair, replacement or reconstruction of such improvements.
- (vi) fail to maintain full current replacement cost fire and extended insurance coverage on the Units and Common Elements and such other insurance as is required under this Declaration;
- (vii) make a material change in any of the following provisions of this Declaration: voting rights; assessments, assessment liens, or the priority of assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Project, or the addition, annexation, or

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withdrawal or Property to or from the Project; insurance or fidelity bond; leasing of Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Units; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors; and

(viii) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit, arbitration and/or administrative or similar proceedings against the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to it for any claim, demand, liability, obligation or matter whatsoever, including without limitation, the construction, physical condition, value, assessments, reserves, and any other matters related to the Project.

Section 9.6 Inspection of Records and Notice to First Mortgagees. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of assessments described in Section 11.7(D) hereof. The Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Articles of Incorporation, Bylaws, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Additionally, if the Project contains fifty (50) or more Condominium Units, the Association shall provide an audited, annual financial statement to any First Mortgagee upon written request. If the Project contains less than fifty (50) Condominium Units, the holders of fifty-one percent (51%) or more of First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished within a reasonable time following such request. Further, the Association shall, if requested in writing, notify each First Mortgagee recorded on its books of any proposed amendment of the Association's Declaration, Articles of Incorporation or Bylaws or any other action requiring the First Mortgagee's consent at least ten (10) days prior to the effective date of such amendment or action. In addition, the Association shall comply with C.R.S. 7-136-101 through 106.

Section 9.7 Promulgation of Rules. The Board may make such rules to enforce the provisions of this Declaration or the Bylaws or to govern the use of the Common Elements or Units or both, as are, in its sole discretion, consistent with the rights and duties established in this Declaration. The Board shall have the sole discretion and authority to change such rules from time to time and to interpret this Declaration or the Bylaws and to resolve any dispute as to the interpretation thereof; the Board's interpretation of the Declaration, Articles of Incorporation, Bylaws and rules shall be final, conclusive and binding on all persons and parties.

Section 9.8 Enforcement. The Board and any aggrieved Owner shall have the power and authority to enforce each and every one of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the decisions, resolutions, rules of the Board. Except as otherwise provided, each Owner shall comply strictly with the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions, resolutions, and rules of the Board adopted pursuant thereto as the same may be lawfully made and amended and/or modified from time to time. Failure to comply with any of the same shall mean that (a) the Board may suspend the Owner's voting rights in the Association and any Association services and usage of Association facilities during any period during which such Owner fails to comply, (b) Board may also file and enforce the liens provided for herein and/or take judicial action against the Owner to enforce compliance with such rules, decisions or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law, including recovery of costs and reasonable attorneys' fees, and/or (c) the Board may also fine any Owner, and his family member, Guest, or tenant who violates the terms and provisions of this Declaration, the Bylaws, and/or the rules, a sum as set forth in the rules and decisions and if such fine remains unpaid for ten (10) days after notice, it shall become a Unit Assessment as provided herein. Any person or entity employed as a property manager may be authorized by the Board to undertake the foregoing enforcement, including without limitation the instituting of litigation and/or the impositions of fines on behalf of the Board.

Section 9.9 Implied Rights. The Association and the Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

Section 9.10 Special Rights of Mortgage Holders. Any holder, insurer or guarantor of a First Mortgage, who has delivered a written request to the Association containing its name, address, legal description and address of the Unit upon which it holds, guaranties, or insures the First Mortgage, shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of the financial statements of the Association, including any annual audited financial statement; (d) received written notice of all meetings of the Executive Board or Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) thirty (30) days' written notice prior to the effective date of termination of any agreement for professional



management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an First Mortgagee; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any (i) damages in excess of Twenty Thousand Dollars (\$20,000.00) to any portion of the Common Elements, or damage that effects the Unit on which the First Mortgagee holds a First Mortgage, and (ii) condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

## X MANAGEMENT

Section 10.1 Management Agreements. The Association may utilize professional management in performing its duties hereunder. Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Board. A copy of all such agreements shall be reasonably available, upon request, to each First Mortgagee and each Owner. Any and all professional management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type. Any professional management agreement shall not exceed one (1) year and shall provide that it can be terminated without payment of a termination fee by the Board with or without cause upon thirty (30) days' written notice. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association, and shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Control. Furthermore, any contracts or leases during the Period of Declarant Control shall be subject to C.R.S. 38-33.3-305. If professional management has been previously required by any holder, insurer or guarantor of a First Mortgage, then any decision to establish self management shall require the prior consent of sixty-seven percent (67%) of the Owners, who are voting in person or by proxy at a meeting duly called for that purpose, and sixty-seven percent (67%) of the First Mortgagees, and it shall then be the duty of the Association or its Board to effect a new management agreement prior to the expiration of any prior, required management contract.

Section 10.2 Other Personnel. The Board may obtain and pay for the services of such other personnel as it deems appropriate in its sole discretion.

## XI ASSESSMENTS

Section 11.1 Personal Obligation to Pay Assessments and Charges. Each Owner of any Condominium Unit, including Declarant, covenants and agrees to pay, and shall be personally obligated to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fines, fees and other sums described in this Declaration and/or imposed by the Association as permitted

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by this Declaration. All Owners of a Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Condominium Unit. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the Common Elements or the facilities contained therein, by abandonment or leasing of his Condominium Unit, or by asserting any claims, defenses or other matters against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. Any utilities which are master metered shall be included in the annual common expense assessments levied by the Association.

Section 11.2 Enforcement of Personal Obligation. In addition to the lien described herein, the Association may, at its option, suspend all voting rights and the right to use any common services and facilities, until all payments owed by an owner are received, and/or may bring an action at law against any Owner to collect any unpaid assessments, charges, fees and other sums. In any such action, the Association shall be additionally entitled to recover, and the Owner to pay, interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge as set forth in the Association's rules, court costs and other collection costs, and reasonable attorneys' fees. Notwithstanding any terms and provisions of this Condominium Declaration to the contrary, but subject to the CCIOA, the sale or transfer of any Condominium Unit shall not affect the personal liability or the lien for assessments, charges, fees or other sum levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessments which became due prior to the First Mortgagee's acquisition of title to such Unit pursuant to any such sale or transfer or foreclosure, or any above-described proceeding in lieu thereof, and further, no First Mortgagee shall be liable for any unpaid assessments, charges, fees or other sums accruing against a Condominium Unit prior to such First Mortgagee's acquisition of title to such Unit pursuant to any such sale, transfer, foreclosure or any above-described proceeding in lieu thereof. No such sale, transfer, foreclosure or any above-described proceeding in lieu thereof shall relieve either any Owner or any Condominium Unit from liability or the lien for any assessments, charges, fees or other sums thereafter becoming due. As provided above, the lien of the assessments provided for herein shall be subordinate to the lien of any purchase money by a First Mortgage of record (including deed of trust), and to any refinancing loan to refinance any such purchase money loan, provided that any such refinancing loan is evidenced by a First Mortgage of record (including deed of trust).

Section 11.3 Annual Assessments. The annual assessment shall be based upon the Board's advance budget of the requirements needed by it to provide for the Common Expenses and the

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administration and performance of its duties during such assessment year. The annual budget shall be adopted pursuant to C.R.S. 38-33.3-303(4). Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determines appropriate; the Board is not required to credit or pay such funds to Owners. The annual assessments may, at the Board's discretion, include, but shall not be limited to the following:

- A. any costs and expenses related to management and to the activities and property of the Association;
- B. any taxes and special tax assessments on the activities and property of the Association;
- C. premiums for all insurance which the Association is required or permitted to maintain as provided in Article XIII hereof and any deductibles or expenses attributable to such insurance, except that the cost of insurance may be prorated by the Declarant between the Residential Units and the Commercial Units on such reasonable basis as determined by the Declarant in its discretion;
- D. expenses for common services which may include, without limitation, common lighting, water, gas, electricity, sewer, snow removal, garbage and trash collection, except any of the foregoing as may be separately metered or billed with the Board's prior approval, and except that the cost of water shall be prorated as follows: 80% to Residential Units and 20% to Commercial Units so long as the Commercial Units are used for office or retail, but if used for other purposes, the Board may require a separate meter or change the percentage of proration;
- E. care of areas surrounding the Building as determined by the Board in its reasonable discretion;
- F. such repairs, restorations, replacements, improvements, and maintenance of the Common Elements which are the responsibility of the Association; provided, however, there shall be no division of assessment charge between the expenses of Limited and General Common Elements, unless otherwise provided herein or by the Board, including without limitation, reasonable allocations between the Residential Units and the Commercial Units, and provided further such work shall not require the prior approval of the Owners regardless of the expense or amount thereof unless a Special Assessment is required pursuant to Section 11.4 hereof;
- G. wages for Association employees;
- H. legal and accounting fees;

I. any deficit remaining from a previous assessment year;

J. the creation of reasonable reserves, surpluses and sinking funds for the periodic replacement, repair and maintenance of those Common Elements which are the Association's responsibilities, and for other periodic expenses, and are payable in regular installments, rather than by special assessments, and adequate reserves for insurance deductibles; and

K. any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Board for the benefit of the Owners under or by reason of this Declaration.

Section 11.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year, as provided in Section 11.5, a special assessment applicable to that year only for the purpose of defraying, in whole or in part:

A. The cost of any emergency situation or any construction, demolition, reconstruction, repair or replacement of all or a substantial part of the Project, including without limitation the Common Elements and any fixtures and personal property related thereto, or

B. The expense of any other contingencies or unbudgeted costs.

Section 11.5 Procedure for Special Assessments Under Section 11.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 11.4 shall be sent by the Board to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. Said notice shall specify the amount of the assessment and the date of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty-seven percent (67%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting. Any such assessment shall require the assent of sixty-seven percent (67%) of the votes which are cast at such a meeting where a quorum is present.

Section 11.6 Unit Assessments. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family, tenants or Guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's rules, and the same is not totally paid for by insurance, the cost thereof shall be an assessment against that Owner and his Condominium Unit and if unpaid shall be both a personal obligation of such Owner and a lien as herein provided. Additionally, the Board may impose assessments against particular Owners and Units

pursuant to C.R.S. 38-33.3-315(3)(a) and (b) and may impose assessments upon Owners and Units receiving particular, individual services as set forth in the Association's rules.

#### Section 11.7 Payment Procedures.

A. Amounts. Subject to the provisions of this Declaration, any amounts assessed as annual or special assessments shall be assessed against each Owner and his Condominium Unit in accordance with that Owner's Proportionate Share. Unit assessments shall be assessed and payable solely by the Owner and the Condominium Unit against which they are levied.

#### B. Payment Dates.

(i) Annual Assessments. The annual assessment shall be divided into twelve (12) equal monthly installments per year, which shall be due and payable by the Owners in advance on the first day of each month. The monthly installments of the first annual assessment for all Condominium Units within the Property shall commence upon the first day of the first month following the first conveyance of any Condominium Unit therein from the Declarant to the first Owner thereof; provided, however, notwithstanding any contrary provision of this Declaration, the Articles of Incorporation or the Bylaws, the annual and special assessments hereunder shall not commence upon any Condominium Unit, whether owned by the Declarant or any other Owner, unless and until initial construction of that Unit by the Declarant has been fully completed, which shall require final governmental approval by the building department and the installation of carpeting or other floor surface in the Unit, but upon full completion of the Unit, the Condominium Unit and its Owner shall be liable to pay full assessments as provided in this Declaration, provided further that unless and until full assessments have commenced as provided above, the Condominium Unit and its Owner shall not be entitled to receive services from the Association. Subsequent annual assessments shall commence on January 1 of each subsequent year. At least twenty (20) days in advance of the annual assessment year, the Board shall establish the amount of the annual assessment against each Owner and his Condominium for the following year, and written notice of any change of the Annual Assessment shall be sent to each Owner.

(ii) Special Assessments and Unit Assessments. Special Assessments and Unit Assessments shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent.

C. Procedure. Failure of the Board to give timely notice of any assessment as provided herein or to comply with any procedure for setting or collecting assessments shall not affect the liability of the Owner or his Condominium Unit for such assessment, and shall not be deemed to be a waiver, modification or release of any Owner from his obligation to pay the same, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice given.

D. Estoppel Certificate. 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 written statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. Upon payment of such fee as required by the Association's rules, the statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request.

E. Initial Fee. The Board shall require the first Owner of each Condominium Unit, at the time of conveyance from Declarant, to make a one-time payment in an amount equal to two (2) months' assessments, which sum shall be used for working capital and to enroll that Owner in the Association and for all matters related thereto and shall be placed in the working capital account of the Association. Such a payment shall not relieve an Owner from making any regular monthly assessment payment as the same comes due and shall not be refundable. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold Units in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits. The working capital fund may be used by the Association to defray any budget deficits, especially during the inception of the Association when the Owner's assessments may be insufficient to cover the costs of operating the Association and performing the obligations of the Association.

#### Section 11.8 Enforcement by Lien.

A. In addition to the personal liability under Sections 11.1 and 11.2 hereof and any statutory lien and rights to which the Association may be entitled under C.R.S. 38-33.3-316, any unpaid assessment, charge, fee, fine or other sums assessed against an Owner or his Condominium Unit, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge as set forth by the Association's rules, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Condominium Unit against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due.

B. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Condominium Unit, setting forth the name of the Owner, the legal description of the Condominium Unit, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Condominium Unit, at the address of the Unit or at such other address as the Association may have in its records for the Owner of the Condominium Unit. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Any recorded lien may be released by recording a document to that effect executed by an officer or agent of the Association. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from pursuing any other right or remedy or suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Condominium Unit at foreclosure or other legal sale, to have the total amount of its lien credited towards any purchase price, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same, but pursuant to C.R.S. 38-33.3-310(4), no votes allocated to a Unit owned by the Association shall be cast. The Association shall have the power and right to cure any default by a Owner under a First Mortgage, and any and all sums extended by the Association shall increase the sums owed by that Owner under the Association's lien and otherwise. Foreclosure of a Unit shall include the membership interest attached thereto but such foreclosure shall not be considered a purchase of such interest pursuant to C.R.S. 7-126-303.

C. The lien provided for herein shall be subordinate to the lien of any real estate taxes and, as provided above, the lien of any First Mortgage, which was duly recorded prior to the date such assessment, charge, fee or other sums became due, encumbering any Condominium Unit, and shall also include any and all advances made by a First Mortgagee, notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Condominium Association's lien. However, such lien shall be superior to all other liens and encumbrances and shall be superior to any homestead exemption as now or hereafter may be provided by Colorado or Federal law, and the acceptance of any right, title or interest in or to a Condominium Unit shall constitute a waiver of such homestead exemption.

Section 11.9 Notice and Opportunity to Cure by First Mortgagee. The holder of any First Mortgage upon a Condominium Unit may request that the Association notify it, in writing at its specified address, of any default by the Owner of said Unit in paying assessments, charges, fees or other sums or performing other obligations under this Declaration, the Bylaws, or rules, which is not cured within sixty

(60) days of when due. Any First Mortgagee may, but shall not be required to, cure any such default and pay any such assessments, charges, fees or other sums.

Section 11.10 Payments by First Mortgagees. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association common property and may pay overdue premiums on hazard insurance policies, or secure new hazards insurance coverage on the lapse of a policy, for such common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## XII

### MAINTENANCE AND REPAIR

#### Section 12.1 Owner's Responsibilities.

A. Total Responsibility. An Owner shall be responsible, at his sole expense, for the maintenance, repair, replacement, alteration and remodeling of the following: (i) any loss, damage or injury to the Project, the Common Elements, or any other Condominium Unit caused, in the sole discretionary determination of the Board, by the negligent or willful act or omission of Owner, his family, Guests, tenants, contractors, other persons or parties acting with the consent of any of the foregoing, or any pets or animals of the foregoing, including without limitation, any damage done by moving vans or delivery vans to the roads, buildings, or other Common Elements; (ii) the interior of the Unit including interior non-supporting walls, floors and ceilings of his Unit and the materials thereof, including but not limited to, plaster, gypsum dry wall, paneling, woodwork, wallpaper, paint, carpet, wall and floor tile and flooring (but not including sub-flooring), which make up the finished surfaces of the perimeter walls, ceiling and floors within the Unit; (iii) all interior and exterior doors, locks, screens, light bulbs, windows and window fixtures, (iv) all cabinets, kitchen and bathroom fixtures and equipment, and appliances; (v) all light, plumbing, furnace, air conditioning, hot-water heater and heating improvements which are for the exclusive use of his Unit, and the related hardware, (vi) any and all additions and improvements made by the Owner after Declarant's initial construction, and (vii) all utility lines, pipes, conduits, equipment and fixtures from the point where they enter his Unit, provided, however, an Owner shall not do or permit any act or work which might impair the structural soundness of the Building or would impair any utilities, or parts thereof, which serve other Condominium Units and provided further an Owner shall not be obligated to undertake any repairs, maintenance, or replacements for which the Association has received insurance proceeds. All maintenance, repair, alteration or remodeling done by an Owner shall be of equal or better materials and workmanship than as originally constructed by Declarant.

B. Limited Responsibility. In addition, each Owner shall be responsible to keep and maintain, at his sole expense, in good repair and a clean sanitary condition, his Limited Common



Elements, including without limitation, repair and restoration of concrete in any deck, balcony, patio and porch and the railings or related equipment located upon any of the foregoing, provided, however, the Board may decide, by written rule, in its sole discretion, to repair, maintain, and restore any Limited Common Element, as Common Expenses pursuant to Section 12.3, even though located within or designated as Limited Common Elements. Except as provided herein, the Owner's responsibility shall not include replacement, repainting, alteration or structural repair of his Limited Common Elements, nor for any maintenance thereof, to the extent such is included as a Common Expense in the Association's budget. Balconies and decks are the Owners responsibility, including painting and staining, and Owners are responsible for cleaning and maintaining the inside of the storage spaces.

C. Owner's Failure. If Owner fails to fulfill his responsibilities under paragraphs A and B of this Section, or otherwise under this Declaration, the Board may, at its option, take such action as it deems appropriate, after ten (10) days' notice to such Owner, except in emergencies, including without limitation performing the Owner's obligations, and any costs resulting therefrom shall be a Unit Assessment against such Owner and his Condominium Unit and shall be due and payable by the Owner thereof.

Section 12.2 Association's Responsibilities. The Board shall determine, in its reasonable business judgment, the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities hereunder and performance thereof. Subject to the foregoing, the Association shall have the duty of maintaining, repairing and replacing the following:

- (i) All of the Common Elements which are not the Owner's responsibility under Section 12.1; such repair and maintenance shall include, but not be limited to, the provision of exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior Building surfaces (except for Limited Common Elements and related equipment and hardware which shall be the Owner's responsibility), roads, driveways, walks and other exterior improvements;
- (ii) All of utilities located outside of a Unit and serving more than one Unit (to the extent not maintained or repaired by the utility company) and, if applicable, any drainage structures or facilities or public improvements to the extent set forth in C.R.S. 38-33.3-307(1.5).
- (iii) Any part of the structure of any Building, or General Common Element even if located within the Unit;
- (iv) Any damage caused to a Condominium Unit by any defect, occurrence or condition of the Common Elements or otherwise for which the Association receives insurance proceeds; the Association's responsibility under this subparagraph (iv) shall include restoration of the Unit, together with any fixtures, built-in cabinets, built-in appliances, and improvements, which are contained within a

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Unit and which comprise part of the Building, and carpeting, if insured, to a condition comparable to that when the Unit was conveyed by Declarant.

Section 12.3 Repair Work by Association. It shall be the responsibility of each Owner to promptly report to the Association any defect or need for repairs which would be the responsibility of the Association. The Board shall engage and pay for all labor and materials as may be necessary for the work for which the Association is responsible. The Board and its authorized representatives shall have the right to enter upon the exterior, and at reasonable times, the interior of any Unit, for inspection or the performance of such work. The cost of the maintenance and repair described in Section 12.2 hereof and any incidental damage caused to a Unit by such work shall be a Common Expense of all of the Owners, and regardless of amount, it shall be assessed as provided herein for annual or special assessments, unless, however, the need for maintenance or repair is the Owner's responsibility under Sections 11.6 or 12.1 hereof. The Board or its authorized representative is hereby authorized to act for any Owner in his absence when, in the reasonable discretionary opinion of the Board or its authorized agent, an emergency exists or damage to other Condominium Units is imminent; the cost of such action shall be a Common Expense except as provided above.

### XIII INSURANCE

Section 13.1 Insurance by the Association. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, the following types of insurance:

A. Property. Property insurance for broad form covered causes of loss for all Common Elements, all Building and improvements upon the Property, including all General and Limited Common Elements, and all Condominium Units (as provided herein), all common property of the Association, and all personal property included in the Common elements, together with all fixtures, building service equipment, built in cabinets, built in appliance, improvements and other personal property which are contained in a Unit and which are financed by a First Mortgage, shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; such insurance must include the Units but not the finished interior surfaces of the walls, floors, and ceilings of the units. The insurance need not include improvements and betterments installed by Owners, but if they are covered, any increased charge may be assessed by the Association to those Owners. Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and shall include to the extent available an "Inflation Guard Endorsement", "Agreed Amount Endorsement", "Demolition Cost Endorsement", "Increased Cost of

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Construction Endorsement" and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and, if applicable, "Steam Boiler Coverage Endorsement" providing that the insurer's minimum liability per accident shall equal the lesser of the insurable value of any building housing such boiler or machinery or Two Million Dollars (\$2,000,000.00). Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

- (1) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and
- (2) such other risks as shall customarily be covered with respect to similar types of projects including those covered by standard "all risk" endorsement including without limitation endorsements for vandalism and malicious mischief, and
- (3) any damage which is caused by or originating from the Common Elements and which is the responsibility of the Association to repair or remedy.

B. Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, in an amount deemed sufficient in the judgment of the Board but not less than any amount specified in the Association's documents, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a unit Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties. Such insurance shall be in such amounts as the Association may from time to time determine, but not in an amount less than One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury and/or for property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Elements and the Condominium Units by the Association, its officers, directors, agents, employees, representatives and the Owners, water damage liability, contractual liability, bailee's liability for property of others and any legal liability that results from lawsuits related to employment contracts in which the Association is a party.

C. Workmen's Compensation. Workmen's Compensation, or similar insurance with respect to its employees in the amounts and forms sufficient to meet the requirements of law, shall be acquired by the Association.

D. Officers' and Directors' Personal Liability Insurance. To the extent obtainable, appropriate officers' and directors' personal liability insurance shall be obtained 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.

E. Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of any sum required under C.R.S. 38-33.3-306(3) or the sum of three months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, trustees, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners, provided however, any managing agent which handles funds for the Association shall be covered by its own fidelity insurance policy, which must provide the same coverage required hereunder of the Association and shall name the Association as an additional insured thereunder. Such policy shall also cover destruction or disappearance of money or securities and forgery. Said policy shall cover any person or entity handling funds of the Association, including, but not limited to, any person employed as an independent contractor for the purpose of managing the Association and any employees of such professional managers, which should also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

F. Flood Insurance. If the Project is located in an area identified by the Secretary of the U.S. Department of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under that Act or one hundred percent (100%) of the current replacement cost of all Buildings and other insurable property located in the flood hazard area.

G. Other Insurance. The Association may obtain such other insurance as the Board shall determine from time to time to be desirable, with respect to the Association's responsibilities and duties. All insurance shall also comply with the requirements and provisions of the CCIOA.

H. Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

Section 13.2 Insurance Policies.

A. Policy Provisions. All insurance shall be carried in blanket form naming the Association as insured, as trustee and attorney-in-fact pursuant to Articles XIV and XV hereof for all of the Owners and First Mortgagees as their interests may appear, in the loss payable clause and otherwise, and shall identify the interest of each Owner (Owner's name and Unit number designation) and the First Mortgagee. Insurance policies carried pursuant to this Declaration shall provide that:

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

(b) The insurer waives its rights to subrogation under the policy against the Association, its officers and directors and any Owner or member of his household;

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

If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Also all policies of insurance to the extent obtainable shall contain the standard mortgage clause and cross-liability endorsements to cover the liabilities of the Owners as a group to an Owner.

B. Insurer. An insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses. All insurance policies shall be written by companies licensed to do business in the State of Colorado and having a Best's Insurance Report rating of B/VI or better.

C. Premiums. Premiums upon insurance policies purchased by the Board and any other expenses connected with acquiring such insurance shall be part of the Common Expenses included in the annual assessments, provided, however, the Declarant may establish and record an allocation between the Residential Units and the Commercial Units. The policy shall provide that no assessment may be made against First Mortgagees and that any assessment for insurance premiums made against others shall not become a lien on the Condominium Units superior to the First Mortgage.

D. Deductibles. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Declaration or as determined by the Board.

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

Section 13.3 Severability. All policies of insurance shall contain a severability of interest endorsement providing that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premiums applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but that the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 13.4 Proceeds. All insurance policies shall contain a standard noncontributory mortgagee clause in favor of each First Mortgagee of a Condominium Unit, which has given notice of its lien to the Association and shall provide that they are for the benefit of the Association, the Owners and their First Mortgagees as their interests may appear and shall provide that all proceeds covering losses shall be paid to the Association in trust for the purposes set out herein. The duty of the Association shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Owners and First Mortgagees as provided herein. The Board may disburse the net proceeds of all insurance policies arising out of such casualty to the contractors engaged in the repair and reconstruction in appropriate progress payments.

Section 13.5 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately meets the requirements of this Declaration and covers such other risks as are customarily covered with respect to Condominium projects similar in construction, location and use. Prior to obtaining any policy of fire insurance or renewal thereof, the Board or the Managing Agent may

obtain a written valuation from a duly qualified real estate, insurance appraiser or other person knowledgeable of replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such valuation upon request.

Section 13.6 Notice to First Mortgagees. Provided that a first Mortgagee has, in writing, requested the following information with respect to a Condominium Unit upon which said First Mortgagee holds the First Mortgage, and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage in excess of Ten Thousand Dollars (\$10,000.00) or destruction of: (a) the Condominium Unit on which such First Mortgagee holds the First Mortgage, and/or (b) the Common Elements, or in the event of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, then timely written notice of any such matters shall be given by the Association to such First Mortgagee.

Section 13.7 Owners' Insurance. An insurance policy issued to the Association does not remove the need for Owners to obtain insurance for their own benefit. It shall be the responsibility of each Owner, and at his own expense, to make arrangements in regard to title insurance on his Condominium Unit, for all insurance on his personal property, including without limitation, furniture, carpet, draperies, oven, range, refrigerator, wallpaper, disposals, appliances, fixtures, and furnishings, and for public liability insurance covering his individual Unit, and, in addition, the Owner may obtain such other and additional insurance coverage on and in relation to his Condominium Unit as he, in his sole determination, shall conclude to as desirable; provided, however, that none of such insurance shall affect the coverage obtained by the Association, nor cause the diminution or termination thereof. Any such insurance obtained by an Owner shall waive the particular insurance company's right of subrogation against the Association and the other Owners. Neither the Association nor the Declarant shall have any responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

#### XIV

#### ASSOCIATION AS ATTORNEY-IN-FACT

This Declaration does hereby make mandatory the irrevocable appointment of the Association as insurance trustee, pursuant to C.R.S. 38-33.3-313(5) and (9) and under this Declaration, and as attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence, condemnation, liquidation of all or a part of the Project, or termination of the Project, including without limitation the

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repair, replacement and improvement of any Units, Building, Common Elements or other portion of the Project which have been so destroyed, damaged, condemned or becomes obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of representing the Owners in any proceedings, negotiations, settlements or agreements related thereto and dealing with the Project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided, and any proceeds therefrom shall be payable to the Association for the benefit of the Owners and their First Mortgagees. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary or its duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence, or condemnation shall be appointed. Said appointment must be approved by the Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more of the Common Elements and at least sixty-seven percent (67%) of the First Mortgagees of the Condominium Units. Notwithstanding any contrary provision of this Condominium Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party, shall have priority over any rights of the First Mortgagee of the Condominium Unit pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses or a taking of Condominium Units and/or Common Elements.

## XV

### DESTRUCTION, DAMAGE OR OBSOLESCENCE

Section 15.1 Damage or Destruction. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme to the extent then reasonably and economically feasible. Any portion of the Project for which insurance is required under this Declaration and available to the Association, and which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to this Declaration and C.R.S. 38-33.3-313, unless notwithstanding any contrary provision:

- A. The Project is terminated, as provided in this Declaration;



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

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

D. Prior to the conveyance of any Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

**Section 15.2 Insurance Proceeds Sufficient.** In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvement(s). Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction. The Association, Owners, and lien holders are not entitled to receive payment of any portion of the insurance proceeds unless there is a surplus of proceeds after the Project has been completely repaired or restored or the Project is terminated.

**Section 15.3 Insurance Proceeds Insufficient.**

A. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-seven percent (67%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units. Such special assessments shall be a Common Expense and made according to each Owner's Proportionate Interest and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article XI. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, late charge, interest at a rate of eighteen percent (18%) per annum, on the amount of the assessment and all reasonable attorneys' fees. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit

of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Section. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any First Mortgagee;
- (2) For payment of taxes and special assessments liens in favor of any assessing entity and the customary expenses of sale;
- (3) For payment of unpaid assessments levied by the Association under this Article and Article XI hereof and all costs, expenses and fees incurred by the Association;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (5) The balance remaining, if any, shall be paid to the Owner of the Condominium Unit.

B. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than sixty-seven percent (67%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate Proportionate Interest of eighty percent (80%), including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, or more of the Common Elements and at least seventy-five percent (75%) of the First Mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and Bylaws. Any termination of this Condominium Project shall also comply with C.R.S. 38-33.3-218. Assessments under Article XI hereof shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's Proportionate Interest, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit

designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Owner's Proportionate Interest. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subsections (1) through (5) of Section 15.3(A).

C. Notwithstanding any provisions of this Declaration, if the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Proportionate Interest of all the Units.

#### Section 15.4 Obsolescence.

A. The Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal and reconstruction is adopted, notice of such plans shall be recorded, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum, and all reasonable attorneys' fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subsection (1) through (5) of this Section 15.3(A).

B. The Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more, may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of sixty-seven percent (67%) of the First Mortgagees of the Condominium Units. In such instance, the Association shall forthwith record a notice setting forth

such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire project shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and the Bylaws. Any termination of this Condominium Project shall also comply with C.R.S. 38-33.3-218. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's Proportionate Interest and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subsections (1) through (5) of Section 15.3(A).

## XVI CONDEMNATION

Section 16.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply, subject to C.R.S. 38-33.3-107:

A. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association.

B. Complete Taking.

(1) In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Owner's Proportionate Interest, provided, however, that if a standard different from the value of the Property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 15.3(A)(1) through (5).

C. Partial Taking. In the event that less than the entire Condominium Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts among the Owners as follows: (a) the total amount allocated to the taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's Proportionate Interest; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other taking or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Section 15.3(A)(1) through (5).

D. The Association shall timely notify each First Mortgagee of any Condominium Unit of the commencement of the condemnation proceedings or eminent domain proceedings and shall notify said mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds Ten Thousand Dollars (\$10,000.00).

Section 16.2 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners and of First Mortgagees of remaining units for amendment of this Declaration as provided in Article XVIII.

Section 16.3 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XV.

## XVII COMMERCIAL UNIT

Notwithstanding any provision of this Declaration, the following shall apply to any Commercial Unit. In the event of any conflict with any other provision, the following shall control:

Section 17.1 Permitted Uses. Any Commercial Unit shall be used only for retail, restaurant, office, and other purposes allowed by the zoning laws of the City of Colorado Springs.

Section 17.2 Nuisances. The customary and ordinary use of any Commercial Unit for the purposes as set forth in Section 17.1 above shall not constitute a nuisance or violation of these Covenants. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the office use of such Condominium Unit. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of his guests, patients, tenants, employees, patrons or invitees transacting business in or visiting such Unit; and any damage to the common property or personal property of the Association, or property of another Owner, caused by such guests, tenants, employees, patients, patrons or invitees shall be repaired at the sole expense of the Owner with whom said guests, tenants, employees, patrons, patients or invitees are transacting business or visiting.

Section 17.3 Signs. Any Commercial Unit may install any sign or advertising which complies with all applicable laws and regulations governing the type, dimensions, design, illumination, color, style and location thereof.

Section 17.4 Inside and Outside Installations. The Owner of any Commercial Unit may make such interior and exterior modifications as may be permitted or required by federal, state, or local laws, codes, and modifications, provided, however, nothing shall be done in a Unit or in, on or to the Common Elements which will or may tend to impair the structural integrity of the Building or which would structurally alter any such Building except as otherwise expressly provided herein. Any Commercial Unit may connect to electric wires, water pipes or air pipes, or any apparatus, machinery or device, without the consent of the Board. No electronic data processing machines or medical or dental equipment or machines using water or electrical current in excess of that normally provided in the Project may be used in the Project without the prior consent of the Board. There shall be no alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the Building. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium Unit for such Owner.

Section 17.5 Rules. Rules may be adopted by the Board as to the Commercial Units, provided however, no changes to such Rules shall be made without the prior written approval of the Owners of the Commercial Units. The Commercial Units shall comply with applicable laws and regulations regarding animals.

Section 17.6 Refuse and Waste. All rubbish, trash, garbage and other waste shall be regularly removed from any Commercial Unit and shall not be allowed to accumulate therein. The Association shall be responsible for the costs of refuse storage and collection. The toilets and urinals in the Project shall not be used for any purposes other than those for which they were designed, and no rubbish or other substance shall be thrown into them so as to obstruct the plumbing system in the Project.

Section 17.7 Storage. There shall be no storage of trash, debris, or rubbish in any area of any Commercial Unit which is exposed to public view, except in appropriate containers.

Section 17.8 Further Subdivision. Any Commercial Unit may be further subdivided by the Declarant or any Owner thereof.

## XVIII GENERAL PROVISIONS

### Section 18.1 Amendment.

A. The covenants and restrictions of this Declaration and the separate Condominium estates created hereby shall run with and bind the land, until such time as this Declaration is terminated or revoked in the manner herein provided.

B. Except as is otherwise provided in Articles XV and XVI, this Declaration shall not be revoked or terminated unless all of the Owners and all First Mortgagees have voted or agreed to such termination or revocation; such termination and revocation shall also comply with C.R.S. 38-33.3-218. This Declaration shall not be amended or modified unless the Owners having at least eighty percent (80%) of the Proportionate Interests and the First Mortgagees of at least sixty-seven percent (67%) of the Condominium Units have voted or agreed to such amendment, provided however, notwithstanding the foregoing, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage of those parties; (b) that this Section, Sections 7.13, 7.15, 7.16, 7.17, 8.3, 9.6, 18.1 and 18.13 and any other section or provision requiring Declarant's consent or providing particular rights to Declarant, may only be amended, terminated or modified with the prior written consent of the Declarant so long as the Declarant owns any Unit or real property in the Property or such longer period as allowed by law or statute; (c) an Owner's Proportionate Interest in the Common Elements appurtenant to each Unit as set forth in Exhibit "B" thereto, shall have a permanent character and shall not be altered without the written consent of all of the Owners and all of the First Mortgagees of Condominium Units; and (d) that the Declarant hereby reserves the right, until the Period of Declarant Control is terminated, and subject to Article IX, Section 9.5, but without the vote of the Owners or the First Mortgagees, to make such amendments to this Declaration, the Map, the Articles of Incorporation, and/or the Bylaws, as may be permitted to Declarant by this

Declaration or by the CCIOA or as may be necessary to correct clerical, typographical or technical errors in said documents or as may be approved in writing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and Mortgagee by accepting a deed or other instrument to this Condominium Unit appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's and Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record any such amendments. Notwithstanding any provision hereof, Sections 7.13, 7.15, 7.16, 8.3, 9.6, 18.1, 18.13, and any other section for the benefit of the Declarant shall not be amended, terminated or modified without the Declarant's prior written consent.

C. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned.

D. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the grantee's index in the name of the common interest community and the Association and in the grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility as set forth in C.R.S. 38-33.3-217(6).

Section 18.2 Acceptance of Provisions of all Documents/Waiver of Homestead. The conveyance, sale, transfer, lease or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the waiver of any homestead rights and any exemptions under any state or federal law and shall be binding upon each grantee and Mortgagee without the necessity of inclusion of such an express provision in the instrument of conveyance or encumbrance.

Section 18.3 Severability. The provisions of this Declaration shall be deemed to be independent and severable and if any of the provisions of this Declaration or any clause, paragraph, sentence, phrase or word, or the application thereof, in any circumstances be invalidated by judgment or court order, such invalidity shall not affect the validity of the remainder of the Declaration, which other provisions shall remain in full force and effect.

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Section 18.4 Conflict. In the event there should be any conflict between the provisions of this Declaration and the Articles of Incorporation of the Association and any Bylaws or rules or regulations of the Association, the provisions of this Declaration shall be deemed controlling. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. The provisions of this Declaration shall be in addition to and supplemental to the CCIOA and to all other provisions of law.

Section 18.5 Notice. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices of matters affecting the Property, which may be given to the Owners by the Association or other Owners by use of regular mail to the registered address, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association as his address filed with the Secretary of State of the State of Colorado, together with copy addressed to the President of the Association at his registered address.

Section 18.6 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

Section 18.7 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are, in no way to be construed to define, limit or otherwise describe the scope of the Declaration nor the intent of any provisions hereof.

Section 18.8 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, Association and each owner, and its heirs, personal representatives, successors and assigns of each of them. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

Section 18.9 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 18.10 Governing Law. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the laws of the State of Colorado.

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Section 18.11 Remedies Cumulative. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 18.12 Implied Approval by Mortgagees. Notwithstanding any provision of this Declaration, any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, as long as the First Mortgagor has sent a written request to the Association, stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guarantees) the Mortgage.

Section 18.13 Development Rights and Special Declarant Rights. In addition and supplement to all rights reserved by the Declarant under this Declaration, the Declarant reserves the following development rights and other special Declarant rights, together with such rights as defined and described under CCIOA, for a period of seven (7) years from the recording of this Declaration or upon Declarant's sale of the last Condominium Unit within the Property, whichever occurs first:

- A. The right to complete or make improvements indicated on the plats or maps,
- B. The right to maintain sales offices, management offices and models in units or on the Common Elements,
- C. The right to maintain signs on the Property and to advertise the Project,
- D. The right to use and permit others to use easements through the Common Elements as may be reasonably necessary for the purpose of making improvements within the Property or performing other rights under the Declaration, and the right to assign garage and/or storage spaces.
- E. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes, including but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.
- F. The right to enter into, establish, execute, amend, and otherwise deal with contracts, assignments, and agreements for the use, lease, repair, maintenance or regulation or parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners and/or the Association.

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G. The right to appoint or remove an officer of the Association or any Director of the Association during the Period of Declarant Control.

H. The right to amend the Declaration in connection with the exercise of any development rights or other rights.

I. The right to amend the Map in connection with the exercise of any development rights or other rights.

J. The right to transfer, assign or delegate any right reserved or granted by this Declaration, law or statute to any person or party to the fullest extent permitted under this Declaration, law or statute.

K. Any and all other rights of Declarant as set forth in this Declaration, by law or statute, including without limitation, any and all development rights and special Declarant rights under the CCIOA; in the event of any conflict, the broadest right reserved by Declarant shall prevail. Any and all rights of Declarant shall be fully assignable and transferable as allowed by law and statute, including, without limitation, the CCIOA. The consent of Owners or First Mortgagees shall not required for the exercise or transfer of any reserved rights, and the Declarant, its successors or assigns may proceed without limitation at its sole option. The Declarant, its successors or assigns may exercise any rights under this Declaration on all or any portion of the Property, in whatever order determined. The Declarant, its successors or assigns shall not be obligated to exercise any such rights or to expand the Project, except as it determines in its sole discretion.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on this 10<sup>th</sup> day of December, 2001.

DECLARANT:

DANIELS LOFT, LLC,  
a Colorado limited liability company

By: 

Title: Manager

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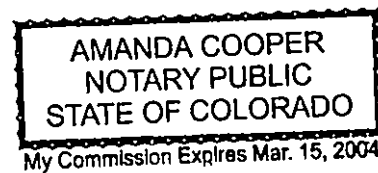
STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 10 day of December, 2001, by Daniel T. Robertson, as Manager of DANIELS LOFT, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

Amanda Cooper  
Notary Public

My commission expires: 3/15/04



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EXHIBIT "A"  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
DANIELS LOFT CONDOMINIUMS

Lots 19 and 20 in Block 71, in the City of Colorado Springs, County of El Paso, State of Colorado.

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EXHIBIT "B"  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
DANIELS LOFT CONDOMINIUMS  
OWNER'S PROPORTIONATE INTEREST/PROPORTIONATE SHARE

Each of the following Condominium Units, located in El Paso County, Colorado, shall have the following proportionate interests/proportionate shares as defined in the Declaration:

<u>Condominium Unit</u>	<u>Proportionate Interest of Common Element</u>	<u>Proportionate Interest for Voting Rights</u>	<u>Proportionate Share of Common Expenses</u>
104	24.8	24.8	24.8
106	12.6	12.6	12.6
108A	11.5	11.5	11.5
108B	10.5	10.5	10.5
108C	15.7	15.7	15.7
108D	8.7	8.7	8.7
108E	8.7	8.7	8.7
108F	<u>7.5</u>	<u>7.5</u>	<u>7.5</u>
	100 %	100 %	100 %

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EXHIBIT "C"  
TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
DANIELS LOFT CONDOMINIUMS  
  
RECORDED EASEMENTS, LICENSES,  
TITLE MATTERS AND PLAT

LIQUOR RESTRICTIONS OF RECORD, WHICH CONTAIN A FORFEITURE OR REVERTER  
CLAUSE, WHICH PROVIDE THAT INTOXICATING LIQUOR SHALL NEVER BE  
MANUFACTURED, SOLD, OR OTHERWISE DISPOSED OF AS A BEVERAGE IN ANY PLACE OF  
PUBLIC RESORT IN OR UPON THE PREMISES OR ANY PART THEREOF.

EFFECT OF INCLUSION OF SUBJECT PROPERTY IN THE DOWNTOWN COLORADO SPRINGS  
BUSINESS IMPROVEMENT DISTRICT, EVIDENCED BY ORDINANCE RECORDED SEPTEMBER  
19, 1996 UNDER RECEPTION NO. 96119010.

EFFECT OF WAIVER OF REPLATTING RECORDED FEBRUARY 7, 2001 UNDER RECEPTION NO.  
20105416.

Condominium Map For Daniels Loft Condominiums recorded on 12-10, 2001 under  
Reception No. 201180276