

**DECLARATION FOR  
111 MAIN STREET LODGE & CONDOMINIUMS**

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**DECLARATION FOR  
111 MAIN STREET LODGE & CONDOMINIUMS**

THIS DECLARATION FOR 111 Main Street Lodge & Condominiums (the "Declaration") is made by 111 Main Street, LLC, a Colorado limited liability company (the "Declarant").

**RECITALS**

- A. Declarant is the Owner of that certain real property located in Summit County, Colorado, more particularly described on Exhibit A.
- B. Declarant desires to create a Common Interest Community on the property described on Exhibit A and such other real property as may be added to this Declaration; portions of this Condominium will be designated for separate ownership and a portion of which will be owned by the Unit Owners as tenants-in-common.
- C. Declarant desires to create significant development rights which are more particularly described in this Declaration.
- D. The name of this Common Interest Community is "111 Main Street Lodge & Condominiums."

**ARTICLE I  
SUBMISSION OF REAL ESTATE; DEFINED TERMS**

**Section 1.1 Submission of Real Estate.** The Declarant hereby submits the real property described on Exhibit A, and such additional real estate as may be subsequently added, pursuant to the expansion rights reserved in this Declaration, hereby submits the real estate, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon (collectively, the "Real Estate") to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101 et seq., as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant further declares that all of the Real Estate shall be held or sold, and conveyed subject to the following easements restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the Real Estate and be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns, and shall inure to the benefit of each Unit Owner. For purposes of the Act, the Common Interest Community shall be a Condominium.

**Section 1.2 Defined Terms.** Each capitalized term not otherwise defined in this Declaration or in the recorded Map for this Condominium shall have the meaning specified or used in the Act. In case of a conflict between a definition in this Declaration and the Act, the definition in this Declaration shall control.

"Allocated Interests" means the Common Expense liability, undivided interest in the Common Elements, and votes in the Association allocated to each Unit.

"Articles" means the Articles of Incorporation for 111 Main Street Condominium Association, Inc., which have been or will be filed with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

"Assessment(s)": "Common Expense Assessments" means, in addition to the definition included in the Act, all Common Expenses and these items levied against a particular Owner or Unit including: (i) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Executive Board; (ii) charges against a particular Owner and the Unit for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Association Documents by the Owner or Related User ("Default Assessments"); (iii) Individual Purpose Assessments (assessed pursuant to the Association Documents); and all Annual and Special Assessments.

"Association" means 111 MAIN STREET CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation, an Association of Unit Owners as defined by the Act and its successors and assigns.

"Association Documents" means this Declaration, the Maps recorded and filed pursuant to the Act, the Articles, the Bylaws and Rules, as each may be supplemented or amended from time to time. Any exhibit, schedule or certificate accompanying a document is part of that document.

"Bylaws" mean the Bylaws adopted by the Association, as amended from time to time.

"Commercial Unit" means a Unit designated on the Map or in this Declaration as a Commercial Unit, denominated with a single-digit number with or without letters and which shall be used for the purposes described in Subsection 5.1.2 below (including the sale of goods or services, and had rooms and bedrooms and overnight and short-term lodging).

"Common Elements" (sometimes referred to as "General Common Elements") means all portions of the Real Estate, other than the Units, including

- (i) Easements through Unit boundary walls, ceilings and floors, for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements.
- (ii) An easement of support in every portion of a Unit, which contributes to the structural support of the Building.
- (iii) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.
- (iv) Any other parts of the Real Estate designated as Common Elements in this Declaration.

A brief description and location of the Common Elements, at the time this Declaration is recorded, may be depicted on the Map. Unless the context otherwise requires, the term "Common Elements" includes Limited Common Elements.

"Common Expenses" means all expenditures made or liabilities incurred by the Association on its behalf or on behalf of more than one Unit Owner, including but not limited to: (i) all expenses expressly declared to be Common Expenses by this Declaration or any other provision of one or more Association Documents; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, improving and operating, repairing, or replacing the Common Interest Community in general and the Common Elements in particular, including allocations to reserves, or in enforcing the Association Documents; (iii) all costs for insurance premiums and deductibles; and (iv) all expenses incurred on behalf of the Association or the Unit Owners and determined by the Executive Board to be Common Expenses.

"Covenants" means all promises, restrictions, reservations, conditions, terms, easements, and rights-of-way specifically set forth in this Declaration or in any of the Association Documents as the same may be adopted or amended from time to time.

"Declarant" means 111 Main Street, LLC, a Colorado limited liability company, and its successors and such of its assigns as to which some or all of the rights of Declarant hereunder are specifically assigned in accordance with the provisions of the Act and this Declaration (referred to as "Successor Declarant(s)"). References in this Declaration to "Declarant" shall include all Successor Declarants unless specifically provided otherwise.

"Default Assessment" means the Assessments levied by the Association pursuant to the Association Documents.

"Eligible Mortgagee" means a holder of a First Mortgage (as hereinafter defined), who has notified the Association, in writing, of its name and address, and that it holds the first deed of trust, mortgage or other first lien on a Unit or Units. The notice must include the Unit number and

street address of the Unit on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in this Declaration. A "Majority of Eligible Mortgagees" shall mean and refer to Eligible Mortgagees of Units to which at least fifty-one percent (51 %) of the voting interests of Units subject to mortgages held by Eligible Mortgagees are appurtenant.

"First Mortgage" means any Mortgage which is not subject to any lien or encumbrance, except those which are given priority by statute.

"Garage Unit" means those Units designated on the Map or in this Declaration as a Garage Unit and which may be used and occupied only for parking of motor vehicles and for storage.

"Improvements" means any construction, structure, fixture or facilities existing or to be placed or constructed on the Real Estate, including but not limited to, buildings, trees and shrubbery, paving, walkways, utility lines, pipes, wires, ducts, conduits and lighting fixtures.

"Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration, the Map, any amendments thereto or by operation of 38-33.3-202(l)(b) and (d) of the Act. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. References herein to Common Elements shall also include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

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

"Map" means the condominium map or condominium plat filed or recorded depicting or describing Unit boundaries and Common Elements for the Community, as the same may be amended or supplemented from time to time.

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

"Mortgagee" means any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

"Related User" means any person who: (i) resides with an Owner within the Community; or (ii) occupies a Unit when prior occupancy is pursuant to an agreement by which the occupant gives consideration in any form to the Owner for such occupancy; or (iii) is a family member of the foregoing persons; or (iv) is a guest or invitee of the foregoing persons.

"Residential Unit" means a Unit designated on the Map or in this Declaration as a Residential Unit, denominated with a 3-digit number with or without letters, and which shall be used for the purposes set forth in Subsection 5.1.1

"Rules" means the guidelines, rules, regulations or policies for the use of Units and Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to the Association Documents and the Act.

"Special Assessment" means an Assessment levied pursuant to Section 9.4 below on an irregular basis.

"Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Summit County, Colorado, designating such party as a Successor

Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

"Unit" means a physical portion of the Common Interest Community designated for separate ownership, together with its undivided Allocated Interest in the General Common Elements as set forth on Exhibit B, as amended. Except where specifically excluded, or the context otherwise requires, "Unit" shall be deemed to include the Residential Units and the Commercial Units but not the Garage Units.

"Unit Owner: Owner. The Declarant, a Successor Declarant, or any other record holder of legal title to a Unit together with Allocated Interests appurtenant to that Unit.

## **ARTICLE II DESCRIPTION OF THE CONDOMINIUM**

**Section 2.1 Initial Number of Units.** The number of Units in the Common Interest Community at the time this Declaration is recorded is eleven (11): Six (6) Commercial Units; four (4) Residential Units; and one (1) Garage Unit, as shown on Exhibit B.

**Section 2.2 Description of Units.**

2.2.1 General. Each Unit will be identified by a separate numerical or alphanumeric designation, as set forth on the Map. The Map consists of a graphic description of the Improvements including, but not limited to, the Building. The Map, together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. There shall pass with each Unit as appurtenances thereto the Allocated Interests appurtenant to that Unit and any other appurtenances as may be provided in this Declaration or the Act. The number of each Unit which is within the Common Interest Community at the time this Declaration is recorded is shown on Exhibit B. Title to Units may be held in any form of ownership recognized in Colorado. In case of any concurrent, joint, or fractional ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of a Unit Owner with respect to the Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Unit Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of a Unit Owner hereunder with respect to the Unit in which they own an interest.

2.2.2 Title to Units/Identification. Every contract for sale, deed, lease, security interest, will, or other legal instrument shall legally describe a Unit in the following manner:

Unit\_\_\_\_, 111 MAIN STREET LODGE & CONDOMINIUMS, according to the recorded Condominium Map and Declaration for 111 Main Street Lodge & Condominiums, Summit County, Colorado.

**Section 2.3 Depiction of Units on the Map.** The Map will be supplemented or amended as necessary to show all Units and Common Elements subject to this Declaration, and depicting thereon:

- (a) the legal description of the Real Estate and a plat or survey thereof;
- (b) the linear measurements and location, with reference to the exterior boundaries of the Real Estate, of the existing Building and all Improvements;
- (c) floor plans and elevation schedule of the Building showing the location, the designation by number of each Unit, the linear dimensions of each Unit and the designation and linear dimensions of all of the Common Elements, including the Limited Common Elements, other than the pipes, flues, conduits, storage bins, wires, ducts, vents and the like for transmission of water, air, smoke, electricity, sewage, natural gas and telephone and television signals;

- (d) all horizontal and vertical boundaries of the Units;
- (e) the elevations of the unfinished interior surfaces of the floors and ceilings as established from a datum plane and the linear measurements showing the thickness of the perimeter and interior walls of the Building; and
- (f) Certificate of completion pursuant to Subsection 201(2) of the Act.

The Map and all supplements thereto shall contain the certificate of a registered land surveyor certifying that the Map fully and accurately depicts the layout, measurements and location of the Building and Improvements, the designations and dimensions of all Units, the elevations of the floors and ceilings and the dimension, location and designation of all Common Elements as required above. In interpreting any and all provisions of this Declaration, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered in any deed or deed of trust, notwithstanding any minor deviations from the location of such Units as indicated on the Map.

**Section 2.4 Unit Boundaries.** Each Unit shall include that part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

2.4.1 Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the parametrical boundaries:

- (a) Upper Boundaries. The plane of the unfinished ceiling of the Unit, whether horizontal or vaulted, regardless of whether or not same is above a drop ceiling or similar installation. In the case of a multi-story Unit, the upper boundaries shall be the ceiling of the highest floor thereof. Space above ceilings, to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.
- (b) Lower Boundaries. The horizontal plane of the unfinished lower surface of the floor of the Unit.

2.4.2 Perimetrical Boundaries. The boundaries of the Unit shall be, as applicable, (i) the vertical planes formed by the interior undecorated unfinished surfaces of all walls bounding the Unit (excluding divider walls); and (ii) the vertical plane formed by the centerline of the divider wall and where there is no such divider wall and the Unit consists in whole or in part of unenclosed space, the vertical plane lying on the survey line defining the Unit perpendicular to the upper and lower boundaries as shown on the Map, as amended or supplemented, extended to their planar intersections with each other and with the upper and lower boundaries.

2.4.3 Apertures and Miscellaneous. Where there are apertures in any boundary, including, but not limited to, windows, doors and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials. All wires, conduits, ducts, vents, concrete joists and other such facilities serving more than one Unit located within any walls, including divider walls, or above the nonstructural acoustical ceiling lying below the upper boundary of the Unit, shall be Common Elements.

2.4.4 Divider Walls. Walls, which separate one Unit from an adjoining Unit. The location of the vertical plane of the centerline of the divider wall shown on the Map shall be the common boundary between the adjoining Units. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units which share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Maintenance and repair of the divider wall shall be accomplished by the appropriate Unit Owners. Each Unit Owner shall be responsible for any damage caused to a divider wall by its negligent or intentional acts or the negligent or intentional acts of its employees or agents, and the cost of said repair shall be the specific obligation of that Unit Owner.

2.4.5 Discrepancies. In cases where there is a discrepancy between the location of Unit boundaries as shown on the Map and those of a Unit as constructed of up to ten (10) feet shall be considered insubstantial, shall have no adverse effect on the title of such Unit, and no amendment of the Map shall

be required. Declarant hereby reserves for itself and the Executive Board, the right, from time to time, without the consent of any Unit Owner, to amend the Map and supplements thereto, to conform the Map to the actual location and dimensions of any of the constructed Improvements, to establish, vacate and relocate utility easements, access easements and parking spaces, and to establish certain Common Elements as Limited Common Elements.

2.4.6 Exceptions. In cases not specifically covered above and/or in any case of conflict or ambiguity, the survey of the Units set forth on the Map shall control in determining the boundaries of a Unit.

2.4.7 Other Property Included Within a Unit. The following shall constitute and be part of a Unit:

- (i) all lath, furring, wallboard plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces of the walls floors or ceilings; and
- (ii) special portions or pieces of equipment, such as utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated outside the Unit (notwithstanding their non-contiguity with the principal portions).

**Section 2.5 Property Excluded from Units/Common Elements.** A Unit shall not be deemed to include:

- (i) those portions of the walls, floors and ceilings not described in Subsection 2.4.7 above;
- (ii) foundations, columns, girders, beams, supports, exterior walls, interior load bearing walls, pillars, underlying floors, essential and permanent installations and equipment for power, lights, and exhaust fans, and all pipes, conduits, ducts, vents and other service and utility lines which are utilized for, serve, or pass through more than one Unit or the Common Elements; and
- (iii) all items set forth in Subsections 202(l) (b) and (d) of the Act.

**Section 2.6 Limited Common Elements.** Limited Common Elements shall be allocated to Units as follows:

2.6.1 General.

- (i) Any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lying partially within and partially outside the designated boundaries of a Unit serving only that Unit is allocated solely to that Unit. (Any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements); and
- (ii) any fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are allocated exclusively to that Unit; and any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one or more Units shall be deemed Limited Common Elements of the Units served.

2.6.2 Limited Common Elements Allocated to Commercial Units. Limited Common Elements allocated exclusively to the Commercial Units are set forth on Exhibit D-1 or as shown on the Map.

2.6.3 Limited Common Elements Allocated to Residential Units. Limited Common Elements allocated exclusively to the Residential Units are set forth on Exhibit D-2 or as shown on the Map.

2.6.4 Limited Common Elements Appurtenant to Particular Units. Certain of the Units have walkways and stairways providing access to each of said Units, as shown on the Map. Each walkway or stairway shall be considered a Limited Common Element appurtenant to the Unit or Units which the walkway serves. Certain Units may also have decks which are appurtenant to such Units, as shown on the map.

**ARTICLE III  
DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

**Section 3.1      Reservation of Development Rights.** The Declarant reserves the following Development Rights over all of the Real Estate:

3.1.1 The right to create or construct and add up to the maximum number of Units allowed by any governmental entity having jurisdiction over the Real Estate.

3.1.2 The right to relocate boundaries between adjoining Units, enlarge Units, enlarge Common Elements, reduce or diminish the size of Units, reduce or diminish the size of Common Elements, subdivide Units, allocate Common Elements as a Limited Common Element appurtenant to one or more, but less than all, of the Units and to complete or incorporate additional Improvements, Units, Common Elements, and Limited Common Elements within the Common Interest Community.

3.1.3 The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities anywhere on the Real Estate not occupied by buildings for the purpose of furnishing utility and other services to buildings and Improvements to be constructed. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements anywhere on the Real Estate not occupied by buildings, for the above-mentioned purposes.

3.1.4 The right to convert Units into Common Elements.

3.1.5 The right to add to or withdraw Real Estate from the Common Interest Community, or to convert Common Elements to Units, and specifically to enclose parking spaces as Garage Units (whether an outdoor surface parking space or a parking space located in the underground parking garage), and to construct additional Units in the airspace above any parking space, Unit, Improvement, Common Element or Limited Common Element.

3.1.6 The right to create a vacation membership club and related rights to occupy, at a reduced rate, portions of the Real Estate and obligations to pay a certain share of expenses associated with the operation of such vacation club.

3.1.7 The right to place additional covenants on all or any portion of the Real Estate in connection with creating, selling, and conveying fractional interests of Units or in connection with exercising the rights reserved in Subsection 3.1.6 above.

3.1.8 The right to designate or change at any time and from time to time the use of one or more Units to/from residential and commercial.

3.1.9 The right to add Units and Common Elements and to subject all or any part of the property described on Exhibit C and such other unspecified real estate to the provisions of this Declaration.

**Section 3.2      Limitations on Development Rights.** The Development Rights reserved in Section 3.1 may be exercised by Declarant at any time without the consent of the Members or the Executive Board, but shall expire as provided in the Act.

**Section 3.3      Phasing of Development Rights.** It is intended that 111 Main Street Lodge & Condominiums will be developed in phases. However, no assurances are made by the Declarant as to where the Declarant will exercise its Development Rights or the order in which, or whether, additional phases will be developed. The exercise of Development Rights as to some phases will not obligate the Declarant to exercise them as to other phases.

**Section 3.4      Special Declarant Rights.** The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

3.4.1 To complete Improvements Indicated on Maps;

3.4.2 To exercise a Development Right reserved in the Declaration;

3.4.3 To maintain sales offices, management offices, signs advertising the Common Interest Community, and models. Specifically, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit or sales office or management office. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities.

3.4.4 To use Garage Units for storage.

3.4.5 To use the Common Elements for the purpose of making Improvements within the Common Interest Community.

3.4.6 To appoint or remove an officer of the Association or an Executive Board member during the period of Declarant Control pursuant to the provisions of Section 3.9 of this Declaration.

3.4.7 To make the Common Interest Community subject to a Master Association.

3.4.8 To merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership.

3.4.9 To amend the Declaration in connection with the exercise of any Development Rights.

3.4.10 To amend the Plats in connection with the exercise of any Development Rights.

3.4.11 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 exclusion for the benefit of and to serve the Unit Owners within the Common Interest Community.

3.4.12 To enter into, establish, execute, amend, and otherwise deal with contracts, licenses and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities, which may or may not be a part of the Common Interest Community for the benefit of the Unit Owners and/or the Association.

3.4.13 To perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights and Additional Reserved Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of Colorado, riparian owners or upland owners to fulfill the plan of development.

3.4.14 To retain all personal property and equipment used in the sales, management, construction and maintenance of the Real Estate that has not been represented as property of the Association. The Declarant reserves the right to remove from the Real Estate any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

3.4.15 To withdraw all or any portion of the Real Estate within the Common Interest Community (the "Withdrawn Property").

3.4.16 To exercise any other right reserved by any other provision of this Declaration.

**Section 3.5 Rights Transferable.** Any Special Declarant Right created or reserved under this Article for the benefit of Declarant may be transferred to any Successor Declarant by an instrument describing the rights transferred and recorded in Summit County, Colorado. Such instrument shall be executed by the Declarant and the Successor Declarant.

**Section 3.6 Exercise of Development Rights.** Declarant may exercise these Development Rights on all or any portion of the Common Interest Community in whatever order of development Declarant, in its sole discretion, determines; no assurances are made as to the order such Development Rights might be exercised. Declarant's exercise of these Development Rights described in this Article III shall be effected by recording a document evidencing the change or expansion in the office of the Clerk and Recorder for the County of Summit.

**Section 3.7 Limitations on Special Declarant Rights.** Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant so long as the Declarant (a) is obligated under any warranty or obligation, (b) holds a Development Right, (c) owns any Unit; or (d) is a Mortgagee; whichever is the latest. Earlier termination of certain rights may occur by statute.

**Section 3.8 Interference with Special Declarant Rights.** Neither the Association nor any Unit Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

**Section 3.9 Period of Declarant Control.**

3.9.1 Powers: Turnover Date. The Declarant shall have the powers reserved in C.R.S. § 38-33.3-303(5) of the Act to appoint and remove officers and members of the Executive Board. The period of Declarant control terminates (the "Turnover Date") no later than the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75 %) of all Units in the ordinary course of business to Unit Owners who are not the Declarant; or (ii) two (2) years after the right to add new Units was last exercised; or (ii) two (2) years after the last conveyance of a Unit to a Unit Owner who is not a Declarant.

3.9.2 Executive Board Appointment. During the period of Declarant control:

- (a) Not later than sixty (60) days after conveyance of twenty-five percent (25 %) of the Units that may be created to Unit Owners other than the Declarant, at least one member and not less than twenty-five percent (25 %) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.
- (b) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Executive Board must be elected by Unit Owners other than Declarant.
- (c) At any time prior to the Turnover Date, the Declarant may relinquish the right to appoint and remove officers, but may require Declarant approval of specific actions of the Executive Board.

3.9.3 Delivery of Property to the Association. Within sixty days after the Unit Owners other than the Declarant elect a majority of the Members of the Executive Board, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by, or controlled by, the Declarant, including, without limitation, those items set forth in Subsection 303(9) (a) through (1) of the Act.

3.9.4 Each Unit formed by combining two or more Units shall have the combined Allocated Interest of the constituent Units only in the Common Elements and Common Expenses for such Units.

3.9.5 Any Limited Common Element created shall be allocated to one or more specific Units as designated by Declarant and shall thereafter be governed in accordance with the applicable provisions of this Declaration.

**Section 3.10 Interpretation.** Recording of amendments to this Declaration and the Map in the office of the Clerk and Recorder for the County of Summit shall automatically give effect to those matters contained in such amendments and, among other things, shall immediately vest in the existing and future

Owners and holders of Security Interests an undivided interest in any of the Common Elements subsequently created in the Unit.

**Section 3.11 No Further Authorizations Needed.** The consent of Unit Owners or Mortgagees shall not be required for exercise of any reserved rights, and Declarant may proceed without limitation at its sole option. Declarant may exercise any reserved rights on all or any portion of the Real Estate in whatever order determined. Declarant shall not be obligated to exercise any reserved rights or to expand the Common Interest Community beyond the number of Units initially submitted.

**Section 3.12 Amendment of the Declaration.** If Declarant elects to exercise a Development Right or Special Declarant Right reserved in this Article III, Declarant shall record such Amendments to the Declaration the Map and Plat and attached Exhibits as are necessary (i) to evidence the exercise of such development right, and (ii) to the extent necessary to reallocate the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to the Declaration according to the formulas provided in this Declaration.

**Section 3.13 Interpretation.**

3.13.1 Recording of amendments to the Declaration and Supplemental Maps shall automatically:

- (a) Vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to his Unit; and
- (b) Vest in the holders of First Mortgages a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

3.13.2 Upon the recording of an Amendment to the Declaration:

- (a) the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Common Interest Community;
- (b) any additional Improvements resulting from the exercise of a Development Right shall be added to and become a part of the Real Estate for all purposes; and
- (c) all conveyances of Units after any expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any Amendment to the Declaration or Supplemental Map. Reference to the Declaration and Map in any instrument shall be deemed to include all Amendments to the Declaration and all Supplemental Maps without specific reference thereto.

**Section 3.14 Reciprocal Easements.** If Real Estate is withdrawn from the Common Interest Community:

- (i) the owner(s) of the withdrawn property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies and across the Common Interest Community; and
- (ii) the Unit Owner(s) in the Common Interest Community shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the withdrawn property.

Declarant shall prepare and record in the office of the Clerk and Recorder of the County of Summit whatever documents are necessary to evidence such easements and shall amend Exhibit A to the Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the owners of the withdrawn property and the Unit Owners in the Common Interest Community shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable.

**Section 3.15 Termination.** The Special Declarant Rights and Development Rights reserved to Declarant, pursuant to this Article III, shall expire twenty years from the date of recording this Declaration, unless (i) they are reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion and development rights of Declarant, (ii) extended as allowed by law, or (iii) terminated by written agreement executed by the Declarant, recorded in the records of the Clerk of Records of Summit County, Colorado.

**ARTICLE IV  
ALLOCATED INTERESTS**

**Section 4.1 Allocation of Interests.** The table showing Unit numbers and their Allocated Interests is attached as Exhibit B. These interests have been allocated in accordance with the formulas set out in this Article IV. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community or if Units are converted to Common Elements or Limited Common Elements.

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

4.2.1 Undivided Interests in Common Elements and Liability for Common Expenses. The percentage of undivided interests in the Common Elements and the liability for Common Expenses allocated to each Unit is allocated pursuant to the following formula:

Commercial Units	46%
Residential Units	54%
Garage Units	0%

The Common Expenses assessed to the Commercial Units shall be allocated among the Commercial Units, based on a fraction, the numerator of which is the number of square feet in each Commercial Unit and the denominator of which is the number of total square feet in all Commercial Units. The Common Expenses assessed to the Residential Units shall be allocated among the Residential Units based on a fraction, the numerator of which is 1 and the denominator is the number of Residential Units then existing in the Common Interest Community. Future Units may be added which will change the percentage liability for Common Expenses.

4.2.2 Votes. Each Residential Unit, when built in the Common Interest Community, shall have one vote. Each Commercial Unit shall have one vote for each 350 square feet of "gross usable area" within each such Commercial Unit. The Garage Units shall not be allocated any vote. For purposes of this declaration "gross usable area" shall be measured from the outside of all exterior walls and the centerline of all demising walls. "Demising walls" means the walls between Commercial Units. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Association Documents, means the specified percentage, portion, or fraction of the total of all votes.

For purposes of the square-foot and "gross usable area" determinations required hereunder, during the period of Declarant Control, Declarant's architect shall determine square footages and "gross usable area". After the period of Declarant Control, the Association shall determine square footages and "gross usable area". All such determinations shall be binding on all unit Owners and their Related Users.

**Section 4.3 Assignment or Reallocation of Allocated Interests Upon Exercise of Development Rights.** The effective date for assigning or reallocating Allocated Interests to Units as a result of the exercise of Development Rights of this Declaration shall be the date on which the amendment required by Section 38-33.3-210 is recorded in the records of the Office of Summit County Clerk and Recorder.

**ARTICLE V  
RESTRICTIONS ON USE, OCCUPANCY ALIENATION  
AND ALTERATION OF UNITS**

**Section 5.1 Use Restrictions.** Subject to the Development Rights and Special Declarant Rights reserved under Article III, the following use restrictions apply to all Units and to the Common Elements:

5.1.1 The use of each Residential Unit is restricted to that of a dwelling and accessory uses including long-term, short-term and overnight rentals and hotel lodging.

5.1.2 The use of each Commercial Unit is restricted to general office, retail or commercial purposes and all uses described in Subsection 5.1.1 above.

5.1.3 No immoral, improper, offensive or unlawful use may be made of the Real Estate and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado and all ordinances, rules and regulations of the County of Summit and Town of Frisco. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

5.1.4 No electrical device creating electrical overloading of standard circuits may be used without permission from the Executive Board. Misuse or abuse of appliances or fixtures within a Unit which affects any other Unit or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

5.1.5 Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash will be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.

5.1.6 All fixtures and equipment will be used for the purposes for which they were designed. There shall not be any floor load in excess of fifty pounds per square foot in a Residential Unit, unless special arrangements are made, and an engineering determination of floor load capacity in the area of heavy use is approved by the Association.

5.1.7 No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Related Users. No Unit Owner or Related User shall make or permit any disturbing noises by himself or herself or a Related User, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or Related Users.

5.1.8 All Unit Owners and Related Users shall strictly comply with all Covenants.

**Section 5.2 Occupancy Restrictions.**

5.2.1 No animals, birds or reptiles of any kind shall be raised, bred, or kept in a Unit, except for: No more than one dog of less than 20 inches in height at the shoulder at maturity and of gentle disposition; no more than two cats. No more than two other household pets, approved and licensed by the Executive Board as to compatibility with the Common Interest Community, may be kept within a Residential Unit. Pets may not be kept, bred or maintained for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Real Estate upon three (3) days' written notice following Notice and Hearing from the Executive Board. The owner shall hold the Association harmless from any claim resulting from any action of his or her pet. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity. The Executive Board may by Rule prohibit Unit Owners and/or Related Users from raising, breeding or keeping any animal, bird or reptile of any kind within the Real Estate. The Executive Board may also levy Industrial Purpose Assessments

against Unit Owners and Related User for the privilege of keeping a pet or pets within a Unit. All pets must be on a leash when on the Common Elements and Owners must clean up after their pets.

5.2.2 All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the Unit Owner.

5.2.3 No signs, window displays or advertising visible from outside a Unit shall be maintained or permitted in any part of a Unit except as Declarant might elect for its unsold Units and as otherwise approved by the Executive Board.

**Section 5.3 Restrictions on leasing or Overnight Occupancy of a Unit.** Any Unit Owner shall have the right to lease or allow occupancy of a Unit upon such terms and conditions as the Unit Owner may deem advisable, subject to the following:

- (a) Short-term occupancies and rentals (of less than 30 days) of Units for residential purposes for resort lodging to overnight and short-term guests shall be subject to reasonable regulation of the Association. Specifically, the Association shall have the power and authority to Require all short-term occupancies or rentals to be through such management company or companies as the Association may approve and designate.
- (b) Any long-term lease or rental agreement (of over 30 days) shall be in writing and shall provide that the lease or rental agreement is subject to the terms of the Association Documents.
- (c) All long-term occupancies, leases and rental agreements of Residential Units shall state that the failure of the tenant, renter or guest to comply with the terms of the Association Documents of the Association shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the Unit Owner-Landlord, or by both of them.
- (d) All long-term and short-term occupancies of Residential Units shall be subject to the right of the Association to remove and/or evict the guest for failure to comply with the terms of the Association Documents.
- (e) All occupancies shall be subject to the Rules.
- (f) Notwithstanding any provision herein to the contrary, the Association's rights, duties and obligations set forth in this Section 5.3 shall not interfere with the rights, duties and obligations arising from the creation of a vacation club membership program or the creation of interval estates, timeshare estates, or fractional interests pursuant to the rights reserved in Subsections 3.1.6 and 3.1.7 above.

**Section 5.4 Additions, Alterations and Improvements by Unit Owners.**

5.4.1 No Unit Owner will make any structural addition, structural alteration, or structural improvement in or to his Unit or Common Interest Community without the prior written consent thereto of the Executive Board in accordance with the Association Documents.

5.4.2 Subject to Subsection 5.4.1, a Unit Owner:

- (a) May make any other improvements or alterations to the interior of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community.
- (b) May not change the appearance of the Common Elements, or the exterior appearance of a Unit, or any other portion of the Common Interest Community, without permission of the Association.
- (c) After acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a General Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the

support of any portion of the Common Interest Community. Removal of partitions or creation of apertures under this Subsection is not an alteration of boundaries. If an adjoining Unit is acquired, boundaries may be reallocated pursuant to Section 38-33.3-212 of the Act.

5.4.3 A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do. The Executive Board shall answer any written request for such approval, within sixty (60) days after the request therefore. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules.

5.4.4 Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.

5.4.5 All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premiums of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change.

The provisions of this Section shall not apply to the Declarant in the exercise of any Special Declarant Rights.

**Section 5.5 Declarant's Rights.** Notwithstanding the foregoing, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees, may maintain any Unit owned by the Declarant or any portion of the Common Elements as model units or sales offices. The Declarant may maintain management offices and signs and displays advertising the Common Interest Community and may rent any of the Units it owns. The Declarant is irrevocably empowered to sell, lease, rent and/or mortgage Units and to lease or rent portions thereof, to any purchaser, lessee or mortgagee of its choice. Nothing herein shall prevent the Declarant from selling an undivided fractional ownership interest in any Unit nor from leasing to any entity formed for the purpose of providing a private vacation club that issues memberships based upon fractional interests or point systems; provided however, that a Unit Owner's interest in the Association's ownership of Common Elements shall never be sold or transferred separate from the sale or transfer of the Unit. The sales office(s) located off the Real Estate, the furnishings and fixtures of any sales office located within a Unit or elsewhere on the Real Estate, signs and all items pertaining to sales shall not be considered Property of the Association and shall remain the property of the Declarant.

**Section 5.6 Absolute Authority of the Executive Board.** The Executive Board shall have the complete authority and control to issue and amend restrictions on use, occupancy and alienation of Residential Units, Commercial Units and Garage Units, and Common Elements in addition to those set forth in this Declaration.

**Section 5.7 Liability of Unit Owner.** Unit Owner shall be responsible for the full and faithful performance of all Covenants, and shall be jointly and severally liable for Assessments or other charges or fines levied by the Association for the breach of a Covenant by the Unit Owner or a Related User.

## ARTICLE VI MECHANIC'S LIENS

**Section 6.1 No Liability.** If any Unit Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no other Unit Owner shall, under any circumstances, be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Unit Owner causing it to be done, and such Unit Owner shall be solely

responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit or any improvements thereon or therein. Nothing herein contained shall authorize any Unit Owner or any person dealing through, with or under any Unit Owner to charge the Common Elements or any Unit other than of such Unit Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Unit Owner or any Unit Owner's Unit for work done or materials furnished to any other Unit Owner's Unit is hereby expressly denied.

**Section 6.2 Indemnification.** If, because of any act or omission of any Unit Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Unit (whether or not such lien or order is valid or enforceable as such), the Unit Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Unit Owner or Owners, within 20 days after the date of filing thereof, and further shall indemnify and save all the other Unit Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

**Section 6.3 Association Action.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association, in accordance with the Association Documents, shall be deemed to be performed or furnished with the express consent of each Unit Owner and shall be the basis for the filing of a lien pursuant to law against each of the Units. In the event a lien is perfected against two or more Units, the Unit Owners of the separate Units may remove their Units from the lien by payment of the fractional or proportional amount attributable to each of the Units affected. Individual payment shall be computed by reference to the Unit Owner's Allocated Interest. Subsequent to payment, discharge or other satisfaction, the Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any Unit not so released or discharged.

## **ARTICLE VII EASEMENTS**

**Section 7.1 Unit Owner's Easement of Enjoyment.** Every Unit Owner has a right and easement of enjoyment in and to the Common Elements of the Common Interest Community, subject to the following provisions.

**Section 7.2 Recorded Easements.** The Real Estate shall be subject to all easements as shown on any recorded plat affecting the Real Estate and to any other easements of record or of use as of the date of recordation of this Declaration.

**Section 7.3 Other Easements.**

7.3.1 Each Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Unit Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

7.3.2 Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future within the Common Interest Community.

7.3.3 There is hereby granted a blanket easement upon, across, over, in and under the Real Estate for the benefit of the Units and the structures and improvements situated thereon, for ingress and

egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Real Estate.

7.3.4 There is hereby granted a non-exclusive easement for ingress, egress and business purposes over and across the Common Elements for customers, clients, invitees, agents and suppliers of the Commercial Units.

7.3.5 No Unit Owner shall hinder nor permit his Related User to hinder reasonable access by any other Unit Owner and his Related User to the Units and parking areas.

**Section 7.4 Reservation of Easements, Exceptions, and Exclusions.** Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, for purposes including, but not limited to, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions, and exclusions for the best interest of all the Unit Owners and the Association, in order to serve all the Unit Owners.

**Section 7.5 Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Real Estate in the proper performance of their duties.

**Section 7.6 Delegation of Use.** Any Unit Owner may delegate his right of enjoyment to the Common Elements to the members of his family, his guests, licensees, customers, clients, agents and Related Users, but only in accordance with and subject to the limitations of the Association Documents.

## **ARTICLE VIII RESPONSIBILITY FOR MAINTENANCE, REPAIR AND REPLACEMENT**

**Section 8.1 Common Elements.** The Association shall be responsible for maintenance, painting, repair and replacement of the Common Elements, including landscaping, lawns, trees, shrubs and all walls, gates, sidewalks, roadways, driveways, parking areas, specifically including but not limited to snow removal services, and the cost of said repair and maintenance of the Common Elements shall be a Common Expense of the Association. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Common Elements.

**Section 8.2 Limited Common Elements.** Except as specifically provided in Section 8.4 below, the Association shall be responsible for maintenance, including painting, repair and replacement, of the Limited Common Elements. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Limited Common Elements. Any expense associated with the maintenance, repair or replacement of any Limited Common Element shall be assessed against the Units to which that Limited Common Element is assigned, equally, provided further that any expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Unit or Units benefited. Each Unit Owner shall be responsible for repair or replacement of broken glass in doors and windows.

**Section 8.3 Special Easement.** Declarant hereby reserves for itself and grants to the Association, the Executive Board, and their respective representatives and agents, a nonexclusive easement to enter upon and use the Real Estate on which a Common Element or Limited Common Element is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article VIII.

**Section 8.4 Unit Owner's Responsibility.** Each Unit Owner shall be responsible for maintaining all portions of his Unit as provided by the Association Documents; provided, however, the Unit Owner shall also be responsible for maintaining in a clean and orderly condition, including snow removal, any balcony, patio, walkway, stairway or deck area appurtenant to his Unit. Each Unit Owner shall be responsible for repair or replacement of broken window panes. The Association shall be entitled to reimbursement for cost of repair from any Unit Owner who causes, or whose Related User causes, damage to the Common Elements or Limited Common Elements by an act of negligence or willful misconduct. Except when the Executive Board determines to provide any of these services or to collect for the provision of any of these services as Common Expense. Each Unit Owner shall also pay his own utilities including electric, gas, phone, and cable television. Notwithstanding anything herein to the contrary, in the event of any damage to a Unit or the contents of a Unit from the proper or improper functioning of the sprinkler system that is part of the Common Elements, each Unit Owner shall be responsible for the costs and expenses associated with repairing such damage, including all consequential damages, in each such Unit Owner's Unit, and Declarant and the Association shall have no liability therefore.

**Section 8.5 Additions, Alterations and Improvements by Executive Board.** Subject to limitations set forth in this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

## ARTICLE IX COVENANT FOR COMMON EXPENSE ASSESSMENTS

**Section 9.1 Obligation.** Each Unit Owner, by accepting a deed for a Unit, covenants to pay to the Association: (i) the Annual Assessment imposed by the Executive Board as necessary to meet the Common Expenses; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration; (iii) Default Assessments which may be assessed against a Unit for the Unit Owner's failure to perform an obligation under the Association Documents; and (iv) Individual Purpose Assessments which may be assessed against a Unit because the Association has incurred an expense on behalf of the Unit Owner under the Association Documents. Fees, charges, late charges, fines, attorney fees and other legal costs of collection of Assessments and other actions to enforce the Association Documents, regardless of whether or not suit was initiated against a Unit Owner pursuant to the Association Documents and the Act, are enforceable as Common Expense Assessments.

**Section 9.2 Annual Assessments.** Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Unit Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements and Limited Common Elements; expenses of management; and insurance premiums for insurance coverage as deemed desirable or necessary by the Association and for any insurance required by the Act or this Declaration to be maintained; landscaping, care of ground, common lighting within the Common Elements and Limited Common Elements; routine repairs and renovations relating to the Common Elements and Limited Common Elements; wages; common water and utility charges for the Common Elements; charges for trash/garbage removal; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous Assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements relating to the Common Elements and Limited Common Elements and improvements and additions to the Common Elements and Limited Common elements on a periodic basis, as needed.

Annual Assessments shall be payable on a prorated basis on the first day of each quarter in advance, which proration shall be made on the basis of the Allocated Interests in effect on the date of Assessment, subject to Section 9.3 below. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Unit Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

**Section 9.3 Budget Adoption and Ratification.** Within thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting at least eighty percent (80%) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a subsequent budget proposed by the Executive Board.

**Section 9.4 Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements or the Common Elements or Limited Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 9.4 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Unit Owners on the basis of the Allocated Interests in effect on the date of Assessment subject, however, to the requirements that any extraordinary maintenance, repair or restoration work to Limited Common Elements on fewer than all of the Units may, at the discretion of the Executive Board, be allocated to the Unit Owners of those affected Units only. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Unit Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

**Section 9.5 Default Assessments.** All monetary fines assessed against a Unit Owner pursuant to the Association Documents or any cost which is incurred by the Association on behalf of a Unit Owner pursuant to the Association Documents, shall be a Default Assessment. Notice of the amount and due date of such Default Assessment shall be sent to the Unit Owner subject to such Assessment at least thirty (30) days prior to the due date.

**Section 9.6 Effect of Nonpayment of Assessments.** Any Common Expense Assessment and any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof shall bear interest at the rate, and assessed a late charge thereon, as determined by the Executive Board, from time to time. The Association, in its sole discretion and without prior notice, may elect to accelerate the installment obligations of any annual Common Expense Assessment. Further, the Association may bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Unit Owner's Unit. An action at law or in equity by the Association against a Unit Owner to recover a money judgment for unpaid Common Expense Assessments or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefore. If the Unit Owner remains in possession of the Unit after a foreclosure judgment has been entered, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit. If the Unit is rented during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of any such receiver shall be paid by the party which does not prevail in the foreclosure action.

**Section 9.7 Application of Payments.** Any payments received by the Association from a delinquent Unit Owner shall be applied first to any interest accrued on the delinquent installment(s) as aforesaid, then to any costs and reasonable attorneys' fees incurred in collection and then to the delinquent and any accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

Recording of the Declaration constitutes record notice and perfection of the lien and no further recording is necessary.

The Declarant and each Unit Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association annual Common Expense Assessments. Common Expense Assessments shall be the personal obligation of the Unit Owner at the time when the Common Expense Assessment or other charges become due.

**Section 9.8 Limited Priority Lien.** The Association's statutory lien for Assessments is prior to a first lien security interest on the Unit recorded before the date on which such Assessments are made to the extent provided in the Act.

**Section 9.9 Apportionment of Common Expenses.** Common Expenses shall be assessed against all Units in accordance with the Allocated Interests in effect when the Assessment is made, except as provided below:

9.9.1 Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to or a part of a Unit or Units or to a Unit or Units to which a Limited Common Element is assigned may be assessed against that or those Units. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element may be assessed equally among the Units to which it is assigned.

9.9.2 Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner may be assessed against that Unit.

9.9.3 Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

9.9.4 An Assessment necessary to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

9.9.5 If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner and their Unit.

9.9.6 As otherwise determined by the Executive Board.

9.9.7 Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against a particular Unit Owner pursuant to this Section are enforceable as Common Expense Assessments.

**Section 9.10 Purpose of Assessments.** In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of residents within the Common Interest Community, and, in particular:

9.10.1 To provide for a Common Expense Assessment made on an annual basis against all Units based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year;

9.10.2 To enforce all provisions of the Association Documents;

9.10.3 To exercise all rights and powers and to discharge all duties and obligations pursuant to the Act and the Association Documents;

9.10.4 To discharge all expenses incurred by the Association in the alteration, improvement, construction, reconstruction, repair, maintenance or replacement of the Common Elements and all improvements located thereon, including fixtures and personal property related thereto; and

9.10.5 To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations.

**Section 9.11 Computation/Commencement of Common Expense Assessments.** The Common Expense Assessment shall be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and

performance of its duties during such Assessment year. The Executive Board may determine that any Common Expense Assessment shall be payable in installments, and may also elect to accelerate the installments remaining for such Assessment year. Common Expense Assessments shall be collected by the Executive Board or its agent. Common Expense Assessments shall begin on the first day of the month in which this Declaration is recorded.

**Section 9.12 Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance and repair of the Common Elements, which shall be funded from Common Expense Assessments.

**Section 9.13 Assessment Lien.**

9.13.1 The Association has a lien on a Unit for any Assessment levied against the Unit including fines imposed against its Unit Owner or Related User from the time the Assessment becomes due. Fees, charges, late charges, fines, and attorney fees and other legal costs of collection of Assessments and other actions to enforce the Association Documents, regardless of whether or not suit was initiated, and interest charged pursuant to the Association Documents and the Act, are enforceable as Assessments under this Section. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.

9.13.2 A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a First Mortgage on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Mortgages described in Subdivision (2) of this Subsection to the extent provided in the Act. A lien under this Section is not subject to the provision of any homestead exemption provided by Colorado law.

9.13.3 Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for Assessment under this Section is not required.

9.13.4 This Section does not prohibit the Association from taking a deed in lieu of foreclosure.

9.13.5 A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

9.13.6 A judgment or decree in an action brought under this Section is enforceable in the same manner as any other judgment obtained in the State of Colorado.

9.13.7 The Association's lien may be foreclosed in like manner as a mortgage on real estate or as otherwise provided in the Act or applicable Colorado law.

9.13.8 In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver of the Unit to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay to the Association during the pendency of the action any sums held by the receiver to the extent of the Association's Assessments.

9.13.9 The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

**Section 9.14 Personal Obligation.** The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Unit Owner of same. No Unit Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expense of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

**Section 9.15 Successor's Liability for Assessment.** In addition to the personal obligation of each Unit Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all

successors to the fee simple title of a Unit, except as otherwise provided in this Declaration, all be jointly and severally liable with the prior Unit Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expense, and attorney's fees against such Unit without prejudice to any such successor's right to recover from any prior Unit Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association.

**Section 9.16 Capitalization of the Association.** Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, in addition to the Assessments described herein, each Unit Owner shall contribute to the working capital and reserves of the Association an amount equal to one-quarter (1/4) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Unit Owner acquires title. Said funds shall remain in the Association and the Unit Owner shall have no future claim to them or any other surpluses the Association might accrue.

## **ARTICLE X INSURANCE**

**Section 10.1 Compliance with the Act.** The Association shall comply with C.R.S. §§ 38-33.3-313 and all other provisions of the Act regarding insurance, as follows:

10.1.1 The Association shall maintain, to the extent reasonably available, all policies of insurance of type and coverage and in the form required by the Act.

10.1.2 Application of insurance proceeds and procedures of adjustment must be made pursuant to the Act.

10.1.3 The Rules may include 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 Unit 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 Unit Owner a pro rata share of any deductible paid by the Association.

10.1.4 Any portion of the Common Interest Community for which insurance is required under the Act which is damaged or destroyed must be repaired or replaced promptly pursuant to, and as required by, the Act.

10.1.5 The Association and its manager must obtain policies of fidelity insurance in amounts and under the circumstances prescribed by the Act.

10.1.6 All costs and expenses borne by the Association in compliance with or as may be permitted by the Act, including, but not limited to, insurance premiums, and all costs and expenses borne by the Association in connection with insured and uninsured losses to persons or property within the Common Interest Community, repairs and replacement of insured and uninsured property, and claims settlement or adjustment shall be considered Common Expenses.

**Section 10.2 Named Insured.** The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them and for such other parties as the Association shall elect to name. The Unit Owners and their mortgagees shall be deemed additional insureds.

**Section 10.3 Custody of Policies and Payment of Proceeds.** All policies shall provide that payments for losses made by the insurer shall be paid to the Association, and all policies and endorsements thereto shall be held for safekeeping by the Executive Board.

**Section 10.4 Unit Owners' Personal Coverage.** Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring

within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

**Section 10.5 Additional Provisions.** All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units.

**Section 10.6 Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense. Premiums may be financed in such manner as the Executive Board deems appropriate.

**Section 10.7 Share of Proceeds.** All insurance policies obtained by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. The duty of the Association with respect to insurance proceeds shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees as provided by the Act.

**Section 10.8 Association as Agent.** The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Real Estate to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of such claims.

**Section 10.9 Benefit of Mortgagees.** Certain provisions in this Article X entitled "Insurance" are for the benefit of and may be enforced by First Mortgagees of Units.

## **ARTICLE XI MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS**

**Section 11.1 The Association.** Every Unit Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

**Section 11.2 Membership.** Members shall be all of the Unit Owners of Units including Declarant. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for each such Unit shall be exercised by one person or alternative persons (who may be a Related User of the Unit Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

**Section 11.3 Compliance with Association Documents.** Each Unit Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Unit for the benefit of all other Units and for the benefit of Declarant's adjacent properties.

**Section 11.4 Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Unit Owners and to Eligible Mortgagees, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

**Section 11.5 Manager.** The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The employment shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on ninety days notice, with or without cause, and without a cancellation fee. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall

not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**Section 11.6 Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

## **ARTICLE XII OPERATION OF THE CONDOMINIUM BY THE ASSOCIATION**

### **Section 12.1 Authority.**

12.1.1 General. The business affairs of the Common Interest Community shall be managed by the Association acting in all instances by its Executive Board unless otherwise provided by the Act or this Declaration. The Association shall be the entity responsible for the operation of the Common Interest Community. The Association shall be governed by its Bylaws and its policies and procedures, as the same may be amended from time to time.

12.1.2 Association as Attorney-in-Fact for Unit Owners. The Association is hereby irrevocably appointed attorney-in-fact for the Unit Owners and each of them, to manage, control and deal with the interest of each Unit Owner in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights in the Association Document to deal with the Common Interest Community upon its destruction or obsolescence as hereinafter provided, and to grant utility easements through any portion of the Common Elements. The Association is hereby granted all of the powers necessary to govern, manage, maintain, rebuild, administer and regulate the Common Interest Community and to perform all of the duties assigned to it pursuant to this Declaration and pursuant to the Act.

### **Section 12.2 Powers; Duties.** The Association shall have the following specific powers and duties:

12.2.1 The Association shall have all of the powers, authority and duties permitted pursuant to the Act.

12.2.2 The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Common Interest Community.

12.2.3 The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve, and otherwise deal with the Common Elements.

12.2.4 The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours to the extent deemed necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to any real or personal property within the Common Interest Community.

12.2.5 The Association may undertake any activity, function or service for the benefit of, or to further the interests of the Unit Owners. Such activities, functions or services may include the provision of security services, garbage and trash collection services and janitorial services. The Association may also arrange with third parties to furnish lighting, heating, utilities and other common services to Unit Owners.

12.2.6 Notwithstanding any provisions herein to the contrary, the Association shall have the absolute right to assign the liability for payment of utilities to Unit Owners based upon usage.

12.2.7 The Association shall have the absolute right to engage a professional property manager as more particularly provided in the Association's Bylaws.

12.2.8 The Association may assign its future income, including its rights to receive Common Expense Assessments, upon the affirmative vote of the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.

12.2.9 The Association shall adopt and publish Rules and establish penalties, including, without limitation, the imposition of fines, for the infraction of such Rules.

12.2.10 The Association may establish such written architectural controls, as it deems necessary to ensure the proper use, development and improvement of real and personal property within the Common Interest Community, and to appoint persons to serve on an architectural review committee.

12.2.11 The Association shall have the right to suspend the voting rights of any Owner who has failed to pay Assessments or who, after notice and an opportunity to be heard, found to have breached a Covenant.

**Section 12.3 Right to Notice and Comment.** Pursuant to C.R.S. § 38-33.3-205(l)(o), before the Board amends the Bylaws or adopts or amends Rules governing the Common Interest Community, or whenever the Association Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Unit Owner may give "Notice and Comment" to the Unit Owners of any matter affecting the Common Interest Community, and Unit Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Unit Owner in writing, delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than three days before proposed action is to be taken. The Notice shall invite comment to the Executive Board or a Unit Owner, orally or in writing before the scheduled time of any meeting.

**Section 12.4 Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Real Estate, the Association shall not be liable to Unit Owners for injury or damage (other than for the cost of maintenance and repair to Common Elements), caused by any latent condition of the Real Estate. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations, improvements or other activities done by or on behalf of the Declarant or any Unit Owner(s) regardless of whether or not same shall have been approved by the Association.

### **ARTICLE XIII AMENDMENT AND TERMINATION**

**Section 13.1 Technical, Clerical, Typographical or Clarification Amendment.** If either the Declarant or the Executive Board shall determine that any amendments to this Declaration or to the map or plat shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence of this Section, the Declarant shall have the right and power to make and execute any such amendment during the period of Declarant control, and thereafter the Board shall have the right and power to make and execute any such amendments without obtaining the approval of any Unit Owners. Each such amendment of this Declaration shall be made, if at all, by the Executive Board prior to the expiration of seven (7) years from the date this Declaration is recorded.

**Section 13.2 Necessary to Exercise Authority of Association Documents.** In addition to the rights granted to the Declarant to execute amendments to this Declaration, the Executive Board shall have the

authority to execute amendments to this Declaration or to the Map or Plat which are reasonably necessary in order to perform duties authorized by this Declaration.

**Section 13.3 Attorney in Fact.** In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Executive Board to make or consent to an amendment under this Section 13.3 on behalf of each Unit Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power of the Executive Board to make, execute and record an amendment under this Section.

**Section 13.4 Amendment of Declaration by Unit Owners.** Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction (except those specifically defined as "use restrictions" pursuant to Section 5.1 above which shall only be amended by the percentage required by the Act) or equitable servitude contained in this Declaration may be changed or repealed, and any such provision added to this Declaration at any time and from time to time upon approval of the Board and at least sixty-seven percent (67%) of the votes in the Association or such lesser percentage as is permitted by the Act.

**Section 13.5 Amendment Required by Mortgage Agencies.** Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which the FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase Mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of the County of Summit, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

**Section 13.6 Mortgagee's Consent.** No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to Eligible Mortgagees without the consent of said mortgagees in each instance. Except as specifically provided herein or if specifically required by an Eligible Mortgagee, the consent and/or joinder of any Mortgagee shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a Mortgage holder is required, such consent or joinder shall not be unreasonably withheld. Failure of an Eligible Mortgagee to respond within thirty (30) days to any written request for approval of an additional amendment to this Declaration wherever such approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute an implied approval of the amendment or addition.

13.6.1 Unless a majority of Eligible Mortgagees have given their prior written approval, the Association shall not be entitled to:

13.6.2 By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Elements (provided, however, that the granting of easements for public utilities or for other purposes consistent with the intended use of the Common Elements, or as set forth herein, shall not be deemed a transfer within the meaning of this clause); or

13.6.3 Change the method of determining Assessments except as otherwise provided herein.

**Section 13.7 Termination.** The Common Interest Community may be terminated upon a vote of the Owners representing 80% of the Allocated Interests in voting as shown on Exhibit B, and in accordance with Section 38-33.3-218 of the Act.

#### **ARTICLE XIV MISCELLANEOUS PROVISIONS**

**Section 14.1 Variance.** The Executive Board or its designee may grant variances or adjustments from any conditions and restrictions imposed by this Declaration or the Rules, if it determines, in its sole discretion that such variance is reasonable and necessary in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of such restrictions and covenants. Such

variances or adjustments shall be granted only in the case the granting thereof shall not be materially detrimental or injurious to other Unit Owners, other Units or any Common Element, shall not militate against the general intent and purpose of this Declaration or the Rules. Granting a variance in a particular situation does not require the granting of another variance in the same or similar circumstance.

**Section 14.2 Additional Rights of Eligible Mortgagees.** In addition to all other rights herein set forth, Eligible Mortgagees shall have the right, upon written request to the Association, and upon payment of a reasonable fee as may be allowed by the Eligible Mortgagees, to:

- (a) Examine the Association's books;
- (b) Receive notice of Association meetings and attend such meetings;
- (c) Receive a copy of the Association's financial statement for the immediately preceding fiscal year;
- (d) Receive notice of an alleged default by any Residential Unit Owner, for whom such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to such Unit Owner;

**Section 14.3 Additional Rights of the Association.** The following rights reserved by the Declarant may be exercised by the Association as a "Successor Declarant".

14.3.1 The Association shall have the right, from time to time, without the consent of any Unit Owner, to amend the Map and supplements thereto, to conform the Map to the actual location and dimensions of any of the constructed Improvements, to establish, vacate and relocate utility easements, access easements and parking spaces, and to establish certain Common Elements as Limited Common Elements.

14.3.2 The Association shall have the right to allocate areas as Common Elements, and further, to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Units to which those specified areas shall become appurtenant in accordance with this Declaration.

**Section 14.4 Unit Owner Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any Related User, but only to the extent that such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

**Section 14.5 Compliance.** In the event a Unit Owner or Related User fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Association Documents or any other agreement, document or instrument affecting the Real Estate or administered by the Association in the manner required, the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines, to sue in a court of law for damages and to charge the Unit Owner and the Unit for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance and to collect such charges by any lawful means. Further, should the Association engage an attorney to seek enforcement as provided by this Section, it shall be entitled to recover from such Unit Owner against whom enforcement is sought, as a Common Expense Assessment, all collection costs and reasonable attorney fees and costs incurred as a result of such Owner's failure to comply, without the necessity of commencing a legal proceeding. In any legal proceeding seeking such enforcement, for each claim, including but not limited to counterclaims, cross-claims, and third-party claims, the court shall award to the party prevailing on such claim the prevailing party's reasonable collection costs and attorney fees and costs incurred in asserting or defending the claim.

**Section 14.6 Condemnation.** If all or any part of the Common Interest Community shall be taken by condemnation or under threat thereof, the applicable provisions of the Act shall apply, and no distribution shall be in violation of any Mortgage.

**Section 14.7 Duration.** Each and every provision of this Declaration of Covenants shall be perpetual and shall run with and bind the land from the date of recording of this Declaration.

**Section 14.8 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado. This Declaration shall be considered to supplement the provisions of the Act, which provisions are incorporated herein by reference as though restated in this Declaration.

**Section 14.9 Construction.** Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

**Section 14.10 Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular; and words of one gender may be construed as denoting such other gender as is appropriate.

**Section 14.11 Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

**Section 14.12 Conflicts Between Documents.** The Association Documents are intended to comply with the Act. In case of conflict between the Association Documents and the provisions of the Act, the provisions of the Act shall control. In case of conflict between this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall control.

**Section 14.13 Captions.** The captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of or intent of the provisions of this Declaration.

**Section 14.14 Notices to Owners and Association.** Each Unit Owner shall register such Owner's mailing address with the Association, and except for monthly statements, notices of Association meetings, other routine notices and notices which may be sent in another manner in accordance with the provisions of the Declaration, all 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 Unit Owner at such registered mailing address. If an Unit Owner fails to register such Unit Owner's mailing address with the Association, such Unit Owner's mailing address shall be deemed to be the address of such Unit Owner's Unit. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, return receipt requested, postage prepaid, to the address of the Association as designated in the Bylaws.





**EXHIBIT A**  
**INITIAL REAL ESTATE IN THIS**  
**COMMON INTEREST COMMUNITY**

Lots 3-6, Block 2,  
KING SOLOMON ADDITION,  
Town of Frisco, Summit County, Colorado.

**SUBJECT TO THE FOLLOWING ITEMS OF RECORD:**

1. THE LIEN FOR REAL PROPERTY TAXES FOR THE YEAR 1998 NOT YET DUE AND PAYABLE.
2. RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED May 10, 1905, IN BOOK 89 AT PAGE 74.
3. TERMS, CONDITIONS AND PROVISIONS OF DEED OF EASEMENT RECORDED August 05, 1959, UNDER RECEPTION NO. 90446.
4. TERMS, CONDITIONS AND PROVISIONS OF DEED OF EASEMENT RECORDED October 05, 1959 UNDER RECEPTION NO. 90667.
5. TERMS, CONDITIONS AND PROVISIONS OF DEED OF EASEMENT RECORDED October 01, 1982 UNDER RECEPTION NO. 246143.
6. RESTRICTIVE COVENANTS WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, AS CONTAINED IN INSTRUMENT RECORDED February 14, 1997, UNDER RECEPTION NO. 533538.
7. TERMS, CONDITIONS AND PROVISIONS OF EXHIBIT B, RESERVING VIEW AND OPEN SPACE EASEMENT ON LOTS 3 AND 4, BLOCK 2, RECORDED February 14, 1997, UNDER RECEPTION NO. 533610.

**EXHIBIT B**

**INITIAL ALLOCATED INTERESTS**

(Attached to and made a part of the Declaration for 111 Main Street Lodge & Condominiums)

Unit	Votes	Allocated Interests in Common Elements and Common Expenses
1A	1	10
1B	1	7
1C	1	7
1D	1	6
1E	1	6
1F	1	10
200	1	11
201	1	16
202A (together with Room 202B)	1	11
203A (together with Room 203B)	1	16
G-1	0	0
	10	100

**EXHIBIT C**  
**PROPERTIES WHICH MAY**  
**BE ADDED TO THE DECLARATION**

Lots 7-12, Block 2,  
KING SOLOMON ADDITION,  
Town of Frisco, Summit County, Colorado

and:

the following additional real property:

All or any part of a lot or parcel located in the  
town of Frisco, Summit County, Colorado,  
provided the owners thereof consent.

**EXHIBIT D-1**  
**LIMITED COMMON ELEMENTS ALLOCATED EXCLUSIVELY TO**  
**ALL COMMERCIAL UNITS**

None at this time.

**EXHIBIT D-2**  
**LIMITED COMMON ELEMENTS ALLOCATED EXCLUSIVELY TO**  
**ALL RESIDENTIAL UNITS**