

DRAFT, April 2020

DECLARATION  
OF  
VELO CONDOMINIUMS

Name of Common Interest Community:

Velo Condominiums

Type of Common Interest Community:

Condominium

Name of the Association:

Velo Condominium Association, Inc.

Person Executing the Declaration:

Thistle Velo LLC, a Colorado limited liability  
company

**Indexing Note:** Please index in the grantee's index under Velo Condominium Association, Inc., and in the grantor's index under Thistle Velo LLC.

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DECLARATION OF  
VELO CONDOMINIUMS

THIS DECLARATION OF VELO CONDOMINIUMS (the “Declaration”) is made as of \_\_\_\_\_, 20\_\_\_, by Thistle Velo LLC, a Colorado limited liability company (the “Declarant”).

RECITALS

- A. Declarant is the owner of that certain real property located in the City and County of Boulder, Colorado, more particularly described on the attached Exhibit A (the “Property”).
- B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute § 38-33.3-101 *et seq.* (the “Act”) named Velo Condominiums.
- C. Declarant has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of Velo Condominiums.

ARTICLE 1  
DECLARATION AND SUBMISSION

Section 1.1 Declaration. Declarant declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and the heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant submits the Property to the provisions of CCIOA.

ARTICLE 2  
DEFINITIONS

The terms used in the Association Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. The following capitalized words when used in this Declaration have the following meanings:

Section 2.1 “Affordable Unit” means a Unit which has a permanent affordability restriction in favor of the City.

Section 2.2 “Agency” means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran’s Affairs (“VA”), Federal National Mortgage Association (“Fannie Mae”) or Federal Home Loan Mortgage Corporation (“Freddie Mac”), or any similar entity or agency that purchases, underwrites, insures or guarantees residential mortgages.

Section 2.3 “Allocated Interests” are the undivided interest in the Common Elements, Common Expense liability, and votes in the Association allocated to each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.3.1 Undivided Interest in Common Elements and Common Expense Liability:  
Subject to the Board’s right to assess expenses as provided in Sections 11.3, 11.4 and 11.7, or as

otherwise allocated in an amendment or supplement to this Declaration, a Unit's share of ownership of Common Elements and the Common Expense liability assigned to the Unit is determined by the percentage equivalent to a fraction, the numerator of which shall be the area of a Unit as specified in Exhibit B, and the denominator of which shall be the area of all Units in the Community as specified in Exhibit B. The undivided interest in Common Elements and Common Expense liability assigned to Units at the time of filing this Declaration are set forth in Exhibit B. The area of each of the Units and the total area of the Units as set forth in Exhibit B are determined based on standard architectural measurements. Such areas shall be conclusive for purposes of determining the allocated interests, even though subsequent measurements may determine different amounts. The undivided interest in Common Elements and Common expense liability for each Unit is subject to decrease with the annexation of additional Units to this Community, or increase should Declarant exercise its right to withdraw property as provided herein.

2.3.2 Votes: The Owners of each Unit are entitled to one vote in the affairs of the Association.

Section 2.4 "Articles" means the Articles of Incorporation for Velo Condominium Association, Inc. a Colorado nonprofit corporation, and any amendments that may be made to those Articles from time to time.

Section 2.5 "Annual Assessment" means the Assessment levied pursuant to an annual budget.

Section 2.6 "Assessments" means the Annual Assessments, Special Assessments, Default Assessments and New Member Fee, or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Unit levied pursuant to Article 11 below. Assessments are also referred to as a common expense liability as defined under CCIOA.

Section 2.7 "Association" means Velo Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.8 "Association Documents" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, and Rules and Regulations.

Section 2.9 "Bylaws" are the Bylaws adopted by the Association, as amended from time to time.

Section 2.10 "CCIOA" means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq., as it may be amended from time to time.

Section 2.11 "City" means the City of Boulder, Colorado.

Section 2.12 "Clerk and Recorder" means the office of the Clerk and Recorder in Boulder County, Colorado.

Section 2.13 "Common Elements" means all portions of the Community except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interests defined in Section 2.3.1 above and include both General Common Elements and Limited Common Elements.

2.13.1 “General Common Elements” means all tangible physical properties of the Community and real property the Association has an obligation to maintain, except Limited Common Elements and the Units, and without limiting the foregoing, specifically includes all parts of the structures or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the structures or any part thereof or any other Unit. The General Common Elements shall include, without limitation, the following:

- a. all the land, and landscaping, grass, shrubbery, trees, plants, gardens and related improvements, including any landscaped areas within dedicated rights-of-way required by the City to be maintained by the Association;
- b. all foundations, columns, girders, beams and supports of the structures making up the Community;
- c. the exterior walls of the structures making up the Community; the main or bearing walls within the structures making up the Community; and all portions of the walls, floors or ceilings in a structure that are not part of the Unit;
- d. the unassigned yards, sidewalks, walkways, parking areas, roads, driveways, paths, and related facilities in the Community;
- e. except as otherwise specifically provided herein, all utility service and maintenance rooms, fixtures, apparatus, equipment, installations and facilities for power, light, gas, telephone, television, hot water, cold water, heating, or similar utility service or maintenance purposes, including furnaces, pumps, tanks, motors, fans, storm drainage structures, compressors, ducts and in general, all apparatus, installations, and facilities, which serve more than one Unit; and
- f. in general, all other parts of the Community necessary in common use or convenient to its existence, maintenance and safety.

2.13.2 “Limited Common Elements” means those parts of the Common Elements which are either limited to or reserved in this Declaration, the Map, in a recorded document executed by Declarant pursuant to Article 15, or by action of the Association, for the exclusive use of more than one but fewer than all Owners. Without limiting the generality of the foregoing, Limited Common Elements include, without limitation:

- a. easements, leases, licenses, rights of way, or other interests in property benefiting one or more, but less than all Units;
- b. shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, courtyards, all exterior doors and door frames and windows and window frames serving a single Unit, utility systems, mechanical, electrical and plumbing systems, exhaust and ventilation systems, and other areas and improvements that are designed to serve one or more but less than all Units;
- c. business identification signage for the Live/Work Units shall be Limited Common Elements allocated to Units in Building E;



- d. any portion of a chute, flue, duct, pipe, drain, wire, conduit, bearing wall, bearing column, or other fixture which lies completely or partially within a Unit, and/or completely or partially outside the designated boundaries of a Unit which serves only that Unit or more than one but less than all Units;
- e. utility meters, water heating facilities, electrical switches and receptacles, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes serving one or more, but less than all, Units; and
- f. parking spaces designated as Limited Common Elements on the Map or as assigned by the Declarant in a deed conveying a Unit.

Section 2.14 “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the remaining Association Documents; (ii) all other expenses of operating, administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) expenses incurred for the benefit of more than one Owner; (iv) insurance premiums for the insurance carried under Article 10; and (v) all expenses lawfully determined to be Common Expenses by the Executive Board.

Section 2.15 “Community” means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

Section 2.16 “Community Association Manager” means 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. If required by the State of Colorado, a community association manager shall be licensed as such.

Section 2.17 “Declaration” means this Declaration and the Map, and amendments and supplements thereto.

Section 2.18 “Director” means a member of the Executive Board.

Section 2.19 “Energy Efficiency Measure” means a device or structure that reduces the amount of energy derived from fossil fuels that are consumed by a Residence located on the real property. Energy Efficiency Measure includes only the following types of devices or structures: (i) an awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption; (ii) a garage or attic fan and any associated vents or louvers; (iii) an evaporative cooler; (iv) an energy-efficient outdoor lighting device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and (v) a retractable clothesline, all as defined in Colorado Revised Statutes section 38-33.3-106.7.

Section 2.20 “Energy Generation Device” means either a solar energy device, as defined in Colorado Revised Statutes section 38-32.5-100.3, or a wind-electric generator that meets the interconnection standards established in rules promulgated by the public utilities commission pursuant to Colorado Revised Statutes section 40-2-124.

Section 2.21 “Executive Board” or “Board” means the governing body of the Association.

Section 2.22 “First Mortgage” means a Mortgage, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.23 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.24 “Good Standing” means an Owner who is no more than thirty (30) days late in the payment any Assessments.

Section 2.25 “Live/Work Unit” means those Units created in Building E should Declarant elect to create such Units as designated on the Map.

Section 2.26 “Map” means the Condominium map of the Community recorded with the Clerk and Recorder, depicting all or a portion of the Community in three dimensions, together with any supplements and amendments thereto. The Map is incorporated herein by reference as if set forth in its entirety.

Section 2.27 “Member” means all Owners of a Unit collectively or, following termination of the Community, all former Owners entitled to distributions of proceeds under CCIOA, their heirs, personal representatives, successors and assigns. The Owners of each Unit shall hold membership in the Association. As used in this Declaration, Member and Owner are interchangeable.

Section 2.28 “Mortgage” means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.29 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under such Mortgage.

Section 2.30 “Nonprofit Act” means the Nonprofit Act, C.R.S. § 7-121-101 *et seq.*, as it may be amended from time to time.

Section 2.31 “Owner” means the owner of record, whether one or more persons or entities, of fee title to any Unit, and “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit. An Owner may be one or more individuals, estate(s), trust(s), or entity(ies).

Section 2.32 “Permanently Affordable Covenants” means collectively (a) the Permanently Affordable Interim Covenant recorded on the Property on \_\_\_\_\_, 2019 at Reception No. \_\_\_\_\_ in the Clerk and Recorder’s Office for Boulder County, Colorado, made by Declarant and recorded prior to the recording of this Declaration, placing certain restrictions and limitations on the use of the Property; (b) the Permanently Affordable Condominium Covenants benefiting the City of Boulder and placing certain restrictions and limitations on the sale, resale, lease and other disposition of each individual Affordable Unit; and (c) the Affordable Condominium Covenants benefiting the Declarant and placing certain restrictions and limitations on the sale, resale, lease and other disposition of the Affordable Units, as the same may be amended from time to time and recorded in the office of the Clerk and Recorder in Boulder County, Colorado after the Permanently Affordable Condominium Covenants.

Section 2.33 “Permitted User” means members of the Owner’s family, or the Owner’s tenant, employee, invitee, or licensee or the employee, invitee or licensees of the tenant.

Section 2.34 “Property” means the real property subject to this Declaration as described in Exhibit A, as it may be amended or supplemented from time to time.

Section 2.35 “Rules and Regulations” means rules, regulations, procedures, policies and guidelines adopted, amended or repealed by the Board from time to time for the regulation and management of the Community, including the Common Elements and the Units.

Section 2.36 “Smoking” means the use of any device that when activated emits a vapor, fume, aerosol, or smoke and can be used to deliver nicotine or any other substance to the person inhaling from the device, e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs, inhalant delivery systems and similar devices, cigarettes, tobacco products, marijuana or any other substance.

Section 2.37 “Successor Declarant” means any person 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 executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 2.38 “Unit” means a physical portion of the Property that is designated for separate ownership or occupancy, together with the appurtenant interest in the Common Elements. The Unit boundaries are depicted on the Map, and to the extent not depicted on the Map are defined in Section 3.6.

### ARTICLE 3 NAME, DIVISION INTO UNITS

Section 3.1 Name. The name of the Community is Velo Condominiums. The Community is a Condominium pursuant to CCIOA.

Section 3.2 Association. The Association is Velo Condominium Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Maximum Number of Units. The maximum number of Units that may be created in the Community is 71. However, the maximum number of Units that may be created is not a representation or a guarantee as to the actual number of Units that will ultimately be included in, or constructed, as part of the Community.

Section 3.4 Identification of Units. The identification number of each Unit is described on the Map.

Section 3.5 Description of Units.

3.5.1 The Community is comprised of Units, including Inclusionary Housing Units and Live/Work Units, as designated in this Declaration or on the Map. Each Unit, the appurtenant interest in the Common Elements, and the appurtenant use of Limited Common Elements, comprises one Unit, and are inseparable and may be transferred, leased, devised or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements is void unless the Unit to which that interest is allocated is also

transferred.

3.5.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Unit number, at Velo Condominiums, City and County of Boulder, State of Colorado, according to the Condominium Map of Velo and as defined and described in the Condominium Declaration of Velo, describing the date and reception number of recording of the Map and Declaration, as they may be amended from time to time, together with the exclusive right to use specifically designated parking spaces.

Section 3.6 Unit Boundaries.

3.6.1 The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

3.6.1.1 the unfinished interior surfaces of the perimeter walls (including, but not limited to, plaster, gypsum, drywall, paneling, wallpaper, paint and wall tiles which are within the Unit), or the adjoining walls, if two or more Units adjoin each other;

3.6.1.2 unfinished interior surfaces of the lowermost floors, and including, but not limited to flooring underlayment materials, flooring materials, carpeting and tile which are within the Unit, but not including subfloors;

3.6.1.3 unfinished interior surfaces of the uppermost ceilings, and including, but not limited to, plaster, gypsum, drywall, paneling, wallpaper, paint and tile; and

3.6.1.4 the doors and windows of the Unit.

3.6.2 Inclusions. Each Unit includes the spaces and improvements lying within the boundaries described above, and as depicted on the Map. Each Unit also includes the spaces and improvements containing utility meters, water heating facilities, electrical switches and receptacles, wiring, pipes, ducts, conduits, smoke detector or security systems and communications, television, telephone and electrical receptacles and boxes within the Unit boundaries, the surface of these items being the boundaries of that Unit, whether or not the spaces are contiguous.

3.6.3 Exclusions. Except when specifically included by other provisions of this Declaration or by the Map, the following are excluded from each Unit: the spaces and improvements lying outside the boundaries described above, support walls, the exterior finishing surfaces of the building in which Units are located, exterior street or common lighting, and any chutes, pipes, flues, ducts, wires conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and other service to other Units and the Common Elements.

Section 3.7 Limited Common Element Boundaries. The horizontal boundaries of porches, balconies, decks, patios, and courtyards shall be the same as the interior horizontal boundaries of the Units to which such Limited Common Elements are appurtenant, unless the Map specifically defines other horizontal boundaries.

Section 3.8 Separate Parcels and Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Community other than Units shall be deemed a parcel. The lien for taxes assessed to any Unit shall be confined to such Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Unit or the Common Elements.

#### ARTICLE 4 RESTRICTIONS ON USE OF UNITS

Section 4.1 Use and Occupancy Regulation, General. All Units shall be held, conveyed, used, improved, occupied, owned, resided upon, and secured subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Executive Board has the power to adopt, amend, repeal and enforce more specific and restrictive Rules and Regulations as it deems reasonable and necessary to carry out the Declaration's intent.

Section 4.2 Right to Adopt Rules and Regulations Regulating Units and Common Elements. Each Owner and Permitted User may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Executive Board may adopt Rules and Regulations governing or restricting the use of the Units and the Common Elements. Each Owner and Permitted User, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such Rules and Regulations. No Owner or Permitted User shall cause, or further, an obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements, without prior written consent of the Executive Board, which consent may be granted or withheld in the Board's sole and absolute discretion. Nothing shall be added to, altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board which consent may be granted or withheld in the Executive Board's sole and absolute discretion.

Section 4.3 Residential Use and Home Operated Businesses. Subject to the provisions of Section 15.1 herein, each Unit, other than the Live/Work Units, shall be used and occupied only as a residence, operating on a nonprofit, noncommercial basis and for home operated businesses so long as such business is (i) allowed by this Declaration; (ii) allowed by zoning resolutions; (iii) is not apparent or detectable by signage, sight, sound, smell, or vibration from the exterior of the Unit; (iv) does not materially increase parking within the Community; and (v) does not increase the insurance obligation or premium of the Association. A family child care home, as defined in CCIOA is only allowed in accordance with the requirements of CCIOA. Commercial uses except as expressly allowed by this Section 4.3 are prohibited. Leasing of Units, subject to the provisions of Section 4.4, is a residential use so long as the tenants reside in the Unit. Live/Work Units may be used and occupied in any manner allowed by the City's zoning ordinances except that the following uses are not permitted: **[insert disallowed uses]**, and further, Declarant reserves the right to further restrict permitted uses in Live/Work Units by amendment or supplement to this Declaration executed by Declarant in furtherance of its rights in Article 15 herein.

Section 4.4 Rental Restrictions. "Lease" means any agreement or arrangement for occupancy of the Unit by persons other than the Owner or an immediate family member, spouse, domestic partner, child or parent of the Owner or affiliate of an Owner, without the concurrent occupancy by the Owner or an immediate family member, spouse, domestic partner, child or parent of the Owner or affiliate of an Owner. "Affiliate of an Owner" means any person who controls, or is controlled by, or is under common

control with an Owner, or is the beneficiary of a trust that is the Owner. Subject to the remaining provisions of this Section 4.4 an Owner has the right to lease his Unit in its entirety upon such terms and conditions as the Owner may choose; provided, however, that (i) the lease must comply with the City's laws, rental regulations and restrictions; (ii) no leases shall be made for less than a thirty (30) day period; (iii) no lease shall be for less than the entire Unit; (iv) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Rules and Regulations are provided to the Lessee with the lease; (v) no Unit may be sublet; (vi) a Unit may be leased only for the uses provided herein; and (vii) a lessee's failure to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. Notwithstanding the foregoing, no Unit or portion thereof may be used for short term lodging, home share arrangements, home exchange arrangements, vacation rental, or any similar temporary lodging or living quarter arrangement. To provide for eligibility of the Community for any Agency, the Association may adopt Rules and Regulations with respect to rental of Units to non-Owners. In addition to any other restrictions imposed by any Agency, such Rules and Regulations may limit the number of Units that may be occupied by non-owner occupants, and may limit the number of Units owned by any one Owner or affiliates of an Owner. Owners renting their Units prior to such Rules and Regulations being adopted shall not be required to terminate existing rental agreements upon adoption of the Rules and Regulations.

Section 4.5 No Unlawful Use. Owners and Permitted Users shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado and all other governmental ordinances, rules and regulations. No Unit shall be used for any purpose not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule. No portion of the Property may be used for the manufacture, storage or disposal of hazardous materials other than in reasonable quantities typically used for purposes of residential cleaning, maintenance, and repair.

Section 4.6 Marijuana and Controlled Substances. No portion of the Property may be used for the growing, sale, or dispensing of marijuana or manufacture or sale of its components or derivatives, or any item regulated by the United States' Controlled Substances Act.

Section 4.7 Smoke-Free Community. The Community is a smoke-free community. As a result Smoking is prohibited in the Units, on Limited Common Elements appurtenant to Units and on the General Common Elements. This smoking prohibition shall apply to Owners, Permitted Users, residents, tenants, guests, licensees, invitees, and any other individual visiting the Association for any purpose.

Section 4.8 Noxious Activities; Nuisances. Except as expressly permitted by this Declaration, no noxious, unreasonably offensive, dangerous or unsafe activity shall be conducted in or on any Unit or the Common Elements, nor shall anything be done, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit anything to be done by others that will unreasonably interfere with the rights, comforts or convenience of other Owners or Permitted Users. Determination of whether an activity violates this covenant shall be at the discretion of the Executive Board, and shall be subject to Rules and Regulations adopted by the Executive Board. The terms "annoyance" and "nuisance" shall not include any activities of Declarant which are necessary to the development and construction of, and sales activities on, the Community.

Section 4.9 Increased Insurance Rates. Except as may be approved in writing by the Executive Board, nothing shall be done or kept which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 4.10 Pets. The right to keep animals as household pets may be restricted by Rules and Regulations adopted by the Executive Board which may supplement, but not supersede or be less restrictive than, the provisions of this Section 4.10. No animals may kept for any commercial purpose and may only be kept in such number or in such manner as to not create a nuisance to any resident of the Community. Without limiting the scope of the preceding sentence, the Board shall have the power to determine the types of animals that are household pets. No Owner or Permitted User shall keep more than two (2) of any combination of dogs and cats at any time. No household pet or animal shall be allowed at any time without adequate supervision by an Owner or Permitted User, or left unattended outside a Unit. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive or prolonged noises created by their pets. The right to keep animals as household pets shall be coupled with the responsibility to pay for any damage caused by such animals, and any damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

Section 4.11 Parking; Use of Garages.

4.11.1 Parking spaces are restricted to use as access and as parking spaces for vehicles. Except as allowed by CCIOA or as permitted in Rules and Regulations adopted by the Executive Board, and except in emergencies or as a temporary expedience for loading or unloading, or for deliveries, equipment, commercial vehicles, motor homes, recreational vehicles, all-terrain vehicles, boats or boat accessories, trailers, campers, busses, trucks greater than 10,000 pounds gross vehicle weight, and other oversized vehicles shall not be stored or parked anywhere on the Community other than in a garage. Except as permitted in Rules and Regulations adopted by the Executive Board, in no circumstances are such vehicles or equipment permitted to remain in the Community overnight except in garages. This restriction, however, shall not restrict trucks, other commercial vehicles or equipment that are necessary for construction, maintenance or repair of any portion of the Community or any improvements located thereon, but parking or storage of such vehicles or equipment shall be subject to Rules and Regulations adopted by the Executive Board.

4.11.2 No abandoned or inoperable vehicle of any kind shall be stored or parked anywhere on the Community except in a garage. An "abandoned or inoperable vehicle" is any vehicle not capable of being driven under its own propulsion, without current registration, without license plates or other identifying marks, or exhibiting other characteristics of abandonment or inoperability, such as, but not limited to, at least one flat tire. The Executive Board has the right to further define abandoned or inoperable vehicles, or restrict certain types of vehicles or equipment by adoption of Rules and Regulations.

4.11.3 In the event the Association determines that a vehicle or equipment is parked or stored in violation of this Section 4.11, then a written notice describing said vehicle or equipment may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle or equipment (if the owner thereof cannot be reasonably ascertained), and if the vehicle or equipment is not removed within a reasonable time thereafter, as determined by the Board, the Association shall have the right to remove the vehicle or equipment at the sole expense of the owner thereof, and if the owner of the vehicle or equipment is an Owner in the Community, the expense of towing shall be levied against the Owner of the vehicle or equipment as a Default Assessment.

4.11.4 No activities such as, but not limited to, maintenance, repair, rebuilding,

dismantling, repainting, or servicing of any kind of vehicle, trailer, boat, or equipment may be performed or conducted on the Community unless such activity is performed in the garage, such activity does not create an unreasonable disturbance for other residents, does not materially adversely affect parking within the Community, and is subject to any Rules and Regulations adopted by the Executive Board. The foregoing restrictions do not prevent washing and polishing of any vehicle or equipment, together with those activities normally incident and necessary to such washing and polishing, within the Community. Notwithstanding the foregoing provisions of this Section 4.11.4, no businesses or commercial enterprises may be conducted or operated in a garage.

4.11.5 The Executive Board shall have the right to further regulate parking in the Community and use of garages (whether General Common Elements, Limited Common Elements, or a portion of a Unit) by the adoption of Rules and Regulations.

4.11.6 Garages and parking spaces allocated as Limited Common Elements may only be reallocated or reassigned between or among Owners in accordance with the provisions of CCIOA. The Executive Board shall have the power to grant licenses for parking on the General Common Elements that is not otherwise allocated as Limited Common Elements.

Section 4.12 Signs. No signs of any nature shall be placed or permitted within the Community except political signs permitted under CCIOA and “Open House” and “For Sale” signs as may be permitted under the provisions of Rules and Regulations adopted by the Executive Board, and signs allowed with respect to the Live/Work Units as permitted in Rules and Regulations adopted by the Executive Board.

Section 4.13 Trash. All trash, garbage, other refuse, compost and recycling shall be kept in containers provided for such purposes, in the area designated for such purposes. The Association shall provide for regular trash removal as a Common Expense. The Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse. Items that do not fit completely within the provided trash bins, with the lids in closed position, may not be placed in the bins and Owners must make arrangements for disposal of such oversized items at the Owner’s expense. Electronic items or hazardous materials may not be disposed of in the Association’s trash bins.

Section 4.14 Units Kept in Clean Condition. Each Unit and the appurtenant Limited Common Elements at all times shall be kept in a clean, sightly and wholesome condition by the Owner of the Unit or the Owner’s Permitted User.

Section 4.15 Satellite Dishes and Antenna. All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit or a Limited Common Element under the exclusive use and control of an Owner except in areas where satellite dish installation is wired for installation by Declarant, unless first approved by the Board. Neither Declarant, nor the Association warrants the availability or quality of reception service to Owners. Any Owner granted the right to install the equipment provided for herein is responsible for any incremental cost of maintenance, repair, or replacement of the roof components and any other affected components of the structure relating to or caused by the installations, and the Board may grant such approval on such terms and conditions as it reasonably deems necessary to protect the Community. The Board may adopt Rules and Regulations regarding location and installation of permitted satellite dishes and antennas, subject to limitations of applicable federal law.

Section 4.16 Energy Efficiency Measures and Energy Generation Devices. No Energy



Efficiency Measures or Energy Generation devices may be installed on the Common Elements without first obtaining approval of the Executive Board in accordance with Article 16 herein. Notwithstanding any provision of this Declaration to the contrary, as provided by Colorado law, installation or use of Energy Efficiency Measures and Energy Generation Devices on or attached to Units may be regulated by the Executive Board for the purposes of imposing reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an Energy Efficiency Measure or Energy Generation Device. In creating reasonable aesthetic provisions, the Executive Board shall consider: (i) the impact on the purchase price and operating costs of the Energy Efficiency Measure or Energy Generation Device; (ii) the impact on the performance of the Energy Efficiency Measure or Energy Generation Device; and (iii) the criteria contained in this Declaration and any guidelines adopted by the Executive Board.

Section 4.17 Neighbor-to-Neighbor Disputes. The Association shall not be obligated to take enforcement action when a dispute under the Declaration or Rules and Regulations is solely a dispute between neighbors involving an alleged nuisance or offensive behavior, not involving the Common Elements and not involving a violation of the Association Documents. In any dispute between neighbors, residents must first work in good faith with each other to resolve their differences before the complaining Owner reports an alleged violation of the Association Documents to the Association. An Owner's complaint to the Association about a neighbor must: (a) be in writing; (b) give as much detail as possible concerning the dispute; (c) provide specific information about what informal efforts to resolve the matter were undertaken by the complaining resident; and (d) provide the name, address, phone number(s) and email address of the complaining resident.

Section 4.18 Floor Covering Restriction. The Board may permit installation or replacement of hard surface flooring, subject to any Rules and Regulations adopted by the Board, which may allow for consideration of the allowed use of the Unit, but in any event may only have a similar assembly as the original floors. The Board may consider the weight of the proposed flooring material, and any effect on the structure or subflooring. Owners applying for such approval shall, at their expense, provide the Board with information regarding such factors as deemed necessary by the Board to evaluate the request, which information may include, without limitation, required engineering studies, a detailed description of the proposed flooring and underlayment, samples of the proposed materials, and any other information requested by the Board in order to evaluate the request.

Section 4.19 Window Coverings. Window coverings in Units shall be in compliance with Rules and Regulations adopted by the Executive Board.

Section 4.20 Storage on Porches, Balconies, Decks, Patios, and Courtyards. Porches, balconies, decks, patios, and courtyards may not be used as storage areas, unless permitted by Rules and Regulations.

Section 4.21 Additional Regulation of Use of Units. In addition to the restrictions on use and occupancy set forth above, the Board shall have and may exercise the right to control Owners' use and occupancy of their respective Units in any reasonable manner.

Section 4.22 Damage Caused by Owner or Permitted User. If, due to the act, neglect or carelessness of an Owner or Permitted Users, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner or Permitted User shall be liable and responsible for the payment to repair or replace such loss or damage. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in this Declaration.

Section 4.23 No Partition, Subdivision or Combination. No portion of the Community shall be subject to an action for partition or division and no Units shall be subdivided, resubdivided or combined without the express written consent of the Executive Board, which consent may be granted, withheld or conditioned in the Executive Board's sole and absolute discretion.

Section 4.24 Restrictions Regarding Affordable Units. Declarant, the Association and Owners of Affordable Units shall comply with the Permanently Affordable Covenants in connection with the creation, availability, eligibility, marketing, selection, sale, use and occupancy of Affordable Units.

Notwithstanding the foregoing provisions of this Article 4, Declarant shall be exempt from the provisions of this Article 4 to the extent that it impedes, in Declarant's sole discretion, its development, design, construction, marketing, sales or leasing activities.

## ARTICLE 5

### MEMBERSHIP; VOTING RIGHTS; DECLARANT CONTROL; ASSOCIATION OPERATIONS

Section 5.1 The Association. Every Owner of a Unit is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of a Unit.

Section 5.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right.

Section 5.3 Membership; Voting Rights. The Association has one (1) class of membership consisting of all Owners, including the Declarant as long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member is entitled to vote in Association matters as set forth in Section 2.3.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents. Only Owners in Good Standing have the right to vote in Association matters.

Section 5.4 Declarant Control. Declarant is entitled to appoint and remove the members of the Association's Executive Board and officers of the Association during the Period of Declarant Control. The "Period of Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of (a) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (c) two (2) years after the right to add new Units was last exercised. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, at least one (1) Director and not less than twenty-five percent (25%) of the Directors shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, not less than thirty-three and one third percent (33-1/3%) of the Directors must be elected by Owners other than the Declarant. Not later than the termination of any Period of Declarant Control, the Owners (which will include Declarant) shall elect an Executive Board of not less than three (3) Directors, the exact number to be set forth in the Bylaws, at least a majority of whom shall be Owners other than Declarant. The Owners elected to the

Board shall take office upon election.

Section 5.5 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the Directors, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

5.5.1 The original or a certified copy of the recorded Declaration, as amended, the Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;

5.5.2 An accounting for Association funds and financial statements from the date the Association first received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the association;

5.5.3 The Association funds or control thereof;

5.5.4 All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Elements;

5.5.5 A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Community;

5.5.6 All insurance policies then in force in which the Owners, the Association, or its Directors and officers are named as insured persons;

5.5.7 Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Community;

5.5.8 Any other permits issued by governmental bodies applicable to the Community and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association;

5.5.9 Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;

5.5.10 A roster of Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

5.5.11 Employment contracts in which the Association is a contracting party; and

5.5.12 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the

services.

Section 5.6 Executive Board. Except for Directors appointed by the Declarant during the Period of Declarant Control, all Directors shall be Members of the Association, or in the event that a Member is an entity other than a natural person, the Director shall be an authorized representative of the entity Member. Subject to the provisions of Section 5.4 above, during the Period of Declarant Control the Executive Board shall consist of three (3) Directors, none of whom need be Members of the Association. Following the Period of Declarant Control, the Executive Board shall consist of three Directors. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 38-33.3-308 of CCIOA, the Owners, by a vote of sixty-seven percent (67%) of the Members present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a Director, other than Directors appointed by the Declarant, with or without cause. Notwithstanding any other provision of this Section 5.6, no Member shall be entitled to serve as a Director, or appoint a Director, if the Member is not in Good Standing.

Section 5.7 Books and Records. Subject to provisions of CCIOA, the Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association as may be required by CCIOA.

## ARTICLE 6

### DUTIES AND POWERS OF THE ASSOCIATION AND EXECUTIVE BOARD

Section 6.1 Duties and Powers of the Association. The Association was formed to operate and manage the Community, maintain, repair and replace the Common Elements, and further the common interests of the Members. The Association may exercise any power, right or privilege expressly granted to the Association in the Association Documents, by CCIOA and by the Nonprofit Act, whether expressed herein or not. The Association, acting through the Executive Board or persons to whom the Executive Board has delegated such powers, has the duties and powers set forth herein and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members of the Association, to maintain, improve, and enhance the Common Elements, and to maintain, improve, and enhance the health, safety, value, attractiveness, and desirability of the Community. Without in any way limiting the general scope of the foregoing, the Association has the following specific duties and powers:

6.1.1 Duty to Manage and Care for Common Elements. The Association shall regulate the use of, manage, operate, care for, maintain, repair and replace all Common Elements and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

6.1.2 Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with Article 10 of this Declaration.

6.1.3 Duty as to Budgets. The Association shall determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments as elsewhere provided in this Declaration.

6.1.4 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

6.1.5 Duty to Keep Records. The Association shall keep current copies of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, and the books,

records and financial statements of the Association available during normal business hours for inspection, and for copying at a reasonable cost, by Owners and First Mortgagees as required by CCIOA.

6.1.6 Duty to Maintain Register of Addresses and Notify of Address Change. The Association shall maintain a register of addresses containing the address (including the facsimile number, if any, and, if the recipient desires to receive notices from the Association by e-mail, the e-mail address) of each Owner, each First Mortgagee if known, the Association, and Declarant. The initial address for each Owner in the Register of Addresses shall be the address for such Owner set forth in the deed or other instrument of Record conveying the Unit to such Owner, or, if no such address is set forth, the address of the Unit of such Owner. Any Owner may change its address in the Register of Addresses by giving notice to the Association of a new address in accordance with Section 21.2, and the Association shall update the register of addresses in accordance with any such notice. No information with respect to Declarant's, any First Mortgagee's or any Owner's address shall be imputed to the Association or any Director, officer, employee or agent of the Association, and the Association is entitled to rely solely on the initial address determined in accordance with this Section 6.1.6 or the most recent address, if any, furnished to the Association by Declarant, any First Mortgagee, or any Owner by notice given in accordance with Section 21.2.

6.1.7 Duty to Comply with Permanently Affordable Covenants. The Association shall comply with all terms, conditions and provisions of the Permanently Affordable Covenants that, by the terms of that instrument, obligate, or apply to, the Association.

6.1.8 Power to Adopt Bylaws and Rules and Regulations. The Association may adopt, amend, repeal and enforce Bylaws and such Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration (including, without limitation, further clarifying maintenance and insurance responsibilities of the Association and Owners), the operation of the Association, the use and enjoyment of Units or the Common Elements, the use of any other property within the Community, and otherwise for the benefit of the Community and the Owners. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall control.

6.1.9 Power to Enforce Documents. The Association has the power to enforce the provisions of the Association Documents, and shall take such action as the Executive Board deems necessary or desirable to cause compliance by Members and Permitted Users. Without limiting the generality of the foregoing, the Association shall have the power to take any action permitted by law, including imposing interest and charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents and may establish different sanctions and fines, or a range of sanctions and fines, for different violations.

6.1.10 Power to Make Contracts and Incur Liabilities. The Association has the power to make contracts and incur liabilities, except that any contract providing for the services of Declarant must provide for termination by either party without cause and without payment of a termination fee on not less than ninety days' written notice.

6.1.11 Power to Grant Easements, Leases, Licenses and Concessions. The Association has the power to grant easements, leases, licenses and concessions through or over the Common Elements. Without limiting the scope of the foregoing sentence, the Association shall have the power to grant licenses for parking on the General Common Elements that is not otherwise allocated as Limited Common Elements.

6.1.12 Power to Employ Managers, Other Employees, Agents and Independent Contractors. The Association has the power to retain and discharge a Community Association Manager, other employees, agents, and independent contractors to undertake any management or functions for which the Association has responsibility under this Declaration to the extent deemed advisable from time to time by the Executive Board, and may delegate any of its duties, powers or functions to the Community Association Manager, other employees, agents or independent contractors. Any contract or agreement with a Community Association Manager shall be terminable by the Association for cause on no more than thirty (30) days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety (90) days' prior written notice. No contract or agreement with a Community Association Manager shall be for a term of more than one (1) year, but may be subject to renewal for succeeding terms of no more than one year each. Notwithstanding any delegation to a Community Association Manager, employee, agent or independent contractor of any duties, powers or functions of the Association, the Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

6.1.13 Power to Engage Consultants. The Association has the power to hire, discharge and pay for such other consultants as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

6.1.14 Power to Commence and Maintain Legal Actions. Subject to the provisions of Article 20 of this Declaration, the Association shall have the power to commence and maintain, defend or intervene in litigation, arbitration and administrative proceedings in its own name on behalf of itself or two or more Owners regarding such issues and against such parties as the Executive Board deems appropriate and as may be permitted under CCIOA. In determining whether to commence or maintain legal actions, the Executive Board shall exercise its reasonable judgment, considering, without limitation, the likelihood of success, the impact, if any that the action may have on the market values of the Units, the cost of pursuing the action including attorneys' fees and expert fees, and the Association's resources and whether a special assessment or reserve depletion will be likely or required in connection therewith or as a result thereof.

6.1.15 Power to Modify and Improve Common Elements. The Association has the power to modify the Common Elements and cause additional improvements to be made as a part of the Common Elements.

6.1.16 Power to Acquire and Maintain Property and Construct Improvements; Power to Convey Common Elements. The Association may acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The Association may construct, modify or demolish improvements on Property. Common Elements may be conveyed in fee only if (a) Members to which at least sixty-seven percent (67%) of the votes are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant

agree in order to convey that Limited Common Element.

6.1.17 Power to Borrow Money and Mortgage Property. The Association has the power to borrow money and assign its future income, including its right to receive Assessments upon resolution of the Executive Board without requiring further approval of the Owners. Further, the Association has the power to encumber, in the name of the Association, any right, title or interest in real or personal property, except that Common Elements may be subjected to a security interest only if (a) Members to which at least sixty-seven percent (67%) of the votes are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to subject that Limited Common Element to a security interest.

6.1.18 Power to Indemnify. The Association has the power to provide for the indemnification of its officers and Directors and maintain directors' and officers' liability insurance.

6.1.19 General Corporate Powers. The Association has all the ordinary powers and rights of a Colorado nonprofit corporation formed under CCIOA and the Nonprofit Act, and may do and perform any and all acts that may be necessary or desirable for the governance and operation of the Association, subject only to limitations on such powers as may be set forth in this Declaration or in the Articles of Incorporation, the Bylaws of the Association, CCIOA or the Nonprofit Act.

Section 6.2 Powers of the Association and the Executive Board. Except for such rights as are expressly reserved to the Members herein or in the Bylaws and in CCIOA, the Executive Board shall have the power to, and may act in all instances on behalf of the Association without approval, vote or agreement of the Owners. The Executive Board may exercise any right or privilege expressly granted to the Association in the Association Documents, by CCIOA and by the Nonprofit Act, or as otherwise allowed by Colorado law, whether expressed herein or not.

## ARTICLE 7 MECHANIC'S LIENS

Section 7.1 No Liability. If any Owner causes any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work performed or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit.

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any mechanics or other lien or order for the payment of money is filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the 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 Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify, defend and hold all other Owners and the Association harmless from and against any and all costs, claims, losses, or damages including, without limitation, reasonable attorneys' fees.

ARTICLE 8  
EASEMENTS

Section 8.1 Recorded Easements. The Property shall be subject to all licenses and easements set forth herein, those shown on any Map or plat, those of record (including those set forth in Exhibit C attached hereto), those provided in CCIOA (including easements for encroachment set forth in Section 214 of CCIOA and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 8.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors, assigns, the Association and for Owners in all future phases of the Community reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls and other structures, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property, or to perform warranty work and repairs and construction work on the Units and Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. Such rights may be exercised by Declarant from time to time, and at different times until completion of the Community by Declarant, including any right or obligation to make repairs, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

Section 8.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, electricity, telephone, television, cable and broadband, except that any such easements not in existence as of the date of recording this Declaration may not be utilized by the utility providers until after receiving written approval from the Executive Board. The blanket easement includes future utility services not presently available to the Units which may reasonably be required or desirable in the future. By virtue of this easement, after receiving approval of the Executive Board, it is expressly permitted for the companies providing utilities to erect and maintain the necessary equipment on any Common Elements and to affix and maintain electrical or other wires, cables, circuits, conduits and pipes on, above, across, and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

Section 8.4 Reservation of Easements, Exceptions and Exclusions. The Board is granted the right to establish from time to time, other easements, permits, or licenses over the Common Elements for the interest of all Owners and the Association. Each Owner is granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common and Limited Common Elements appurtenant to that Owner's Unit, which right is appurtenant to the Owner's Unit, and which right is subject to limited and reasonable restrictions on the use of Common Elements set forth in Rules and Regulations.

Section 8.5 Emergency Access. A general easement is granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter the Property in the proper



performance of their duties.

Section 8.6 Maintenance and Repair Access. Some of the Common Elements are or may be located within a Unit, or are accessible only through a Unit. All Owners shall permit a right of entry to the Executive Board, or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, replacement or inspection of any Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. For routine inspections, maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry. The Board or its agent has the authority to use such reasonable force as necessary to enter the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as the Owner has provided access as set forth above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements resulting from such forcible entry.

All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any Common Elements, at the instance of or as the result of the acts or omissions of the Association, shall be paid for as a Common Expense of the Association. No Owner is entitled to diminution or abatement for inconveniences or discomfort arising from such repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially to the same as the condition in which they existed prior to the damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then that Owner is solely responsible for the costs of repairing the damage, including any damage to the Common Elements or other Units. In the event the Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for the damages and assess the responsible Owner a Default Assessment.

Section 8.7 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

## ARTICLE 9 MAINTENANCE

Section 9.1 Maintenance by Owners. Each Owner shall maintain, repair and replace, as necessary: (a) the interior of his Unit, including floor finishes including tile and wood floors, and carpeting, and non-supporting walls and the surface materials such as plasters, drywall, paneling, wallpaper, and paint of the perimeter walls, ceilings and floors within the Unit; (b) fixtures and equipment installed within the Unit or located outside the Unit but serving only such Unit, including maintenance or repairs thereto to the extent necessary in order to avoid damaging other Owners; (c) utility service lines serving the Unit to the point where such lines connect with utility lines serving other Units; (d) the Limited Common Elements appurtenant to such Owner's Unit, including entry doors, garage doors, windows and screens, and all glass, window and door mechanisms, interiors of garages, interior walls of carports, including trimming, fertilization, weeding and landscaping of enclosed yard areas appurtenant to Owners' Unit added to such enclosed yard areas by Owners with approval of the Board, and fences enclosing such yard areas, except that the Association shall be responsible for maintaining, repairing or

replacing parking spaces exterior to garages, porches, balconies, decks, and patios designated as Limited Common Elements and Limited Common Elements that serve more than one Unit; and (e) those portions of an Owner's Unit damaged or destroyed by an event of casualty. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. The Association reserves the right, from time to time, and at different times, to assign the responsibility for maintenance of the improvements (including Common Elements) to the Owners of the Units, and Owners are obligated to accept such maintenance responsibility, provided such assignment is done in a fair and nondiscriminatory manner. Further, the Association reserves the right to revoke any permission granted or responsibility delegated to Owners, from time to time, and at different times, in which event the Association shall be responsible for maintenance as further set forth herein. Subject to availability of any insurance proceeds, in the event of damage or destruction of a Limited Common Element that is the Owner's responsibility to maintain, repair or replace, from any cause other than the carelessness, negligence or tortious acts of another Owner or Permitted User, the then-Owners of the Units to which the Limited Common Element is appurtenant shall equally bear the expense to repair or rebuild the Limited Common Element to its previous condition. An Owner shall bear the cost of damage to the extent of such Owner's or Permitted User's carelessness, negligence or tortious acts.

Section 9.2 Owner's Failure to Maintain or Repair. In the event that a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Common Elements or a Unit is damaged or destroyed due to the failure of an Owner to properly maintain or repair the Unit, and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Common Element or Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Common Elements and the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the performance of the work shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a Default Assessment against the Unit until reimbursement is made.

Section 9.3 Owner's Failure to Notify of Repairs to Common Elements. Each Owner is responsible for notifying the Association, in a timely manner, of any necessary repairs to the Limited Common Elements appurtenant to that Owner's Unit for which the Association is responsible to maintain and repair. An Owner shall be responsible for all damages to the Limited Common Elements that result from their failure to make a timely repair request to the Association. All costs incurred by the Association in connection with the repair of the Limited Common Elements attributable to the Owner's omission shall be paid by the Owner to the Association upon demand, and until paid, shall be a Default Assessment enforceable in the same manner as any other unpaid Assessment.

Section 9.4 Maintenance by Association. Except as provided otherwise in this Article 9, the Association is responsible for the maintenance and repair of the General Common Elements and those Limited Common Elements identified in Section 9.1(d) above, whether located inside or outside of Units. Without in any way limiting the general scope of the foregoing, the Association is responsible for the maintenance, repair and replacement of the following:

- a. the exteriors of the structures making up the Units, including the roofs, walls, foundations, window wells, gutters, downspouts, water spigots, and exterior lights (including lightbulb replacement);
- b. the parking spaces and driveways located within the Community;

- c. all outdoor improvements located within the Community, including all fences, landscaping except landscaping within fence enclosed yards assigned to individual Units, and trash bins;
- d. all mail boxes or kiosks;
- e. all stairwells, hallways, and other walkways contained within the Community and located outside of a Unit; and
- f. painting, maintenance, repairs or replacement of porches, balconies, decks, and patios, exterior walking surfaces, railings, and any Limited Common Elements that serve more than one Unit.

Section 9.5 Snow and Trash Removal. Except as otherwise provided herein, the Association shall provide for snow and trash removal services, unless performed by another private or public entity. Notwithstanding this, each Owner is responsible for removing snow from his/her porch, balcony, deck, patio, or courtyard. The Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse.

Section 9.6 Association Maintenance as Common Expense. Subject to availability of any insurance proceeds, the cost of maintenance, repair and replacement by the Association is a Common Expense. Further, the cost of maintenance, repairs or replacement of an Owner's Limited Common Elements, if reasonably allocable, shall be allocated by the Executive Board to the Owner benefiting from such maintenance, repair or replacement. Damage to the interior or any part of a Unit resulting from the maintenance, repair, or replacement of any Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense, subject to availability of any insurance proceeds. If such damage is caused by the negligence or carelessness of an Owner, or an Owner's Permitted User, then the Owner is responsible and liable for all such damage and the cost thereof, to the extent that the Owner or Permitted User's negligence or carelessness caused such damage. The Owner shall timely pay for such damage and costs, and all unpaid or unreimbursed costs shall be a Default Assessment enforceable in the same manner as any other unpaid Assessment.

Section 9.7 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or carelessness of an Owner or Permitted User, the then Owners of the Units to which the Limited Common Element is appurtenant shall equally bear the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage or destruction to the extent of such Owner's or Permitted User's negligence or carelessness.

Section 9.8 No Other Alterations to Common Elements. Except as required or permitted herein, no Owner may make any addition or other alteration to any portion of the Common Elements (whether General and Limited Common Elements), no matter how minor, without the Executive Board's prior express written consent, which consent may be withheld in the Executive Board's sole and absolute discretion.

## ARTICLE 10 INSURANCE

Section 10.1 General Insurance Provisions. The Association shall acquire and pay for, out of

the assessments levied under Article 11 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

10.1.1 Property Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then-current insurable replacement cost of the improvements located on the Property including, except as set forth herein, all Units and Common Elements. The Association's insurance shall not cover fixtures, interior walls, floors, partitions, doors, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, other elements or materials comprising a part of the Units, or betterments and improvements made by Owners. Such insurance may exclude building excavations and foundations if such coverage is not available. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow the Agency's requirements. In the event the Community has central heating or cooling or contains a boiler, coverage for loss or damage resulting from boiler and machinery equipment accidents in an amount equal to the lower of \$1,000,000 shall also be obtained.

10.1.2 Commercial General Liability. Commercial general liability insurance for the Community in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Community in the Boulder metropolitan area including automobile liability insurance if appropriate.

10.1.3 Requirements of Property Insurance and Commercial General Liability Insurance. The insurance policies required by Sections 10.1.1 and 10.1.2 above may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

10.1.4 Mandatory Owner's Insurance. Each Owner shall obtain and maintain insurance coverage on those portions of the Owner's Unit not insured by the Association's property insurance policy under Section 10.1.1 above, which shall include, at a minimum, the fixtures, interior walls, floors, partitions, doors, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, other elements or materials comprising a part of the Units, or betterments and improvements made by Owners. In addition, each Owner shall obtain and

maintain public liability insurance coverage for such Owner's Unit and the Limited Common Elements appurtenant thereto in a minimum amount of \$300,000 per occurrence and workman's compensation insurance covering work within each Unit or on the Limited Common Elements appurtenant thereto. In the event an Owner fails to obtain and maintain such insurance, and an uninsured loss occurs which would have otherwise been covered under the insurance required by this paragraph, such Owner shall be responsible for the loss suffered, and the Association shall be entitled to recover any damages or any expense incurred by it from the Owner as a Default Assessment. Further, in the event that an Owner fails to obtain and maintain such insurance the Association is not obligated to apply any insurance proceeds to restore the affected Unit except to the extent of the Association's insurance.

Section 10.2 Certificates of Insurance: Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 10 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners, and to all First Mortgagees.

Section 10.3 Insurance Proceeds. Any loss covered by the Association's insurance policies described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.4 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.4 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.4.1 The common interest community created by this Declaration is terminated, in which case the approval must first be obtained of Owners to which sixty-seven percent (67%) of the votes in the Association are allocated;

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

10.4.3 There is a vote not to repair or replace by (a) Owners to which at least sixty-seven percent (67%) of vote in the Association are allocated (and First Mortgagees representing 51% of the votes of Units subject to such Mortgages) and (b) every Owner of a Unit or assigned Limited Common Element that will not be repaired or replaced; or

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

Subject to the Executive Board's right to allocate deductibles as provided herein, the cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all Owners or Mortgagees, as their interests may appear in proportion to each Owner's allocated interests in ownership of the Common Elements.

Section 10.5 Fidelity Insurance. Fidelity insurance must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any Community Association Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) fifty thousand dollars (\$50,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or Community Association Manager as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Community Association Manager, such insurance or bonds must be obtained by or for the Community Association Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.6 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation in the amounts and forms as may now or hereafter be required by law.

Section 10.7 Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board and the Association's officers against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. Such insurance shall have no exclusion for full coverage of Declarant-appointed Directors.

Section 10.8 Other Insurance. The Association shall maintain flood insurance if any part of the Community is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Community or the maximum coverage available under the appropriate National Flood Insurance Program. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

Section 10.9 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if some of the insurance is attributable to some but not all of the Units, the Association reserves the right to charge the Owners for which the insurance coverage is attributable, an amount equal to the premium attributable to such additional insurance coverage. Any additional premiums attributable to the acts or omissions of an Owner for which the insurance premium is increased shall be paid by the Owner to the Association, and until paid shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessments.

Section 10.10 Insurance Procedures; Deductibles; Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims,

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

## ARTICLE 11 ASSESSMENTS

Section 11.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, shall pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for any Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith is maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments are payable in accordance with the levy thereof, and no offsets or deductions thereof are permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under the Association Documents. This Section 11.1 is subject to the rights of Mortgages set forth in Section 17.1 below.

Section 11.2 Budget. The Executive Board shall, in advance, prepare and adopt a proposed Common Expense budget at least ninety (90) days before expiration of the fiscal year based on estimated Common Expenses. Estimated Common Expenses shall include, but are not limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as required herein or deemed desirable or necessary by the Association, Common Element landscaping, care of grounds within the Common Elements, routine repairs and renovations within the Common Elements, wages, common water and sewer utility charges for the Common Elements and the Units, legal and accounting fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed. Within ninety days after adoption of the proposed budget, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary (which delivery may include electronic mail to an electronic mail address provided by the Owner) of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by the Owners to which at least sixty-seven percent (67%) of the interests in Common Elements are allocated, whether or not a quorum is present. In the event that a proposed Common Expense budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Executive Board is deemed approved by the Owners.

Section 11.3 Annual Assessments. Annual Assessments shall be determined based on the adopted and ratified Common Expense budget. The Executive Board shall levy and assess the Annual Assessments to each Owner in accordance with the Allocated Interests in effect on the date of the Annual

Assessment, provided, however, that any expense associated with the maintenance, repair or replacement of a Limited Common Element (other than parking spaces and patios) shall be assessed against the Units to which the Limited Common Element is assigned, equally among such Units, and the Executive Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only. Annual Assessments shall be payable in advance monthly or on such other basis as may be determined by the Executive Board, and shall be due on the first day of each period in regular installments on a prorated basis. The omission or failure of the Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 11.4 Specialty Allocated Expenses. Notwithstanding any other provision herein to the contrary, payment of utility service charges for any utility service that is separately metered to individual Units is the obligation of the Unit Owner and is not a Common Expense, and is not subject to budget ratification. If such amount is billed to the Association, the Executive Board shall allocate such amounts as nearly as possible based on the proportion of usage that each Unit bears to the total usage, or if such a determination is not possible, on any other reasonable, nondiscriminatory basis determined by the Executive Board.

Section 11.5 Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to each Unit on the first day of the month following the effective date when such Unit is subject to and bound by the terms of this Declaration. Until commencement of the Annual Assessments, the Declarant shall pay all Common Expenses of the Association.

Section 11.6 Special Assessments. In addition to the Annual Assessments, the Executive Board may levy in any fiscal year one or more Special Assessments, without a vote or approval of the Owners, payable over such a period as the Executive Board may determine for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess the Special Assessment only against the Owners of affected Units. 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 Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

Section 11.7 Default Assessments. All monetary fines and other enforcement costs assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, is a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 11.8 New Member Fee. The Association requires each Owner of any Unit (other than Declarant) upon the acquisition of the Unit to make a nonrefundable contribution to the Association in the amount equal to one-sixth (1/6th) of the total annual assessment at the time of acquisition (regardless of whether or not assessments have commenced as provided herein). This contribution may be used for the benefit of the Association as the Board deems appropriate, including without limitation to meet unforeseen expenditures or to purchase additional equipment, property or services, or to fund reserves. Such contributions do not relieve an Owner from making regular payments of assessments as the same



become due. Notwithstanding the above, no New Member Fee shall be levied upon transfer of title of a Unit: (i) to the Declarant; (ii) to the Association; (iii) by a co-Owner to any person who was a co-Owner immediately prior to such transfer; (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner; (v) to an entity wholly owned by the Owner or to a family trust created by the Owner for the direct benefit of the Owner and his or her spouse and/or heirs at law, provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; (vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage; or (vii) to a First Mortgagee (or affiliate thereof) who acquires title to a Unit via foreclosure of its Mortgage or via deed in lieu of foreclosure.

Section 11.9 Effect of Nonpayment: Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid when due shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Executive Board deems appropriate;
- (ii) If the delinquency continues for a period of thirty (30) days, assess an interest charge from the due date until paid at the yearly rate of twenty-one percent (21%) per year or such lesser amount determined by the Executive Board;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate all remaining Assessment installments for that fiscal year so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vi) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (ii) the lien or charge of any first mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a first mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any First Mortgagee of an action or a nonjudicial foreclosure either to enforce or extinguish the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly Assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The

acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 11.10 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 11.11 Statement of Status of Assessment Payment. Upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting is deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 11.12 Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Community Association Manager, then such other persons or Community Association Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Community Association Manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per quarter an accounting for the previous quarter. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

## ARTICLE 12 DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. Except as provided in Section 10.4, in the event of damage to or destruction of all or part of any Common Elements, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property. The property insured by the Association pursuant to Article 10 may be referred to as the "Association-Insured Property".

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction is minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article means restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, unless the approval to not repair or reconstruct is obtained from Owners to which at least sixty-seven percent (67%) of all ownership interests in the Common Elements are allocated (and First Mortgagees representing 51% of the votes of Units subject to such Mortgages), including every Owner of a Unit or assigned Limited Common Element that will not be repaired or reconstructed. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments shall not be abated during the period of insurance adjustments, repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any property insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.6, levy, assess and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in a like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by and the amounts received from the Special Assessments provided for above, are a fund for the payment of the costs of repair and reconstruction after casualty. The first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be retained by the Association to offset future expenses of the Association.

### ARTICLE 13 CONDEMNATION

Section 13.1 Rights of Owners. Whenever all or any part of the Common Elements is taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain in lieu of a taking under threat of condemnation, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under CCIOA, the award shall be disbursed as follows: if the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners to which at least sixty-seven percent (67%) of the ownership interests in the Common Elements are allocated shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executives Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association

to offset future expenses of the Association.

Section 13.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of First Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in CCIOA upon termination of the Community.

#### ARTICLE 14 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 8, (b) purchasing and maintaining insurance pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 12, (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 13, above, or (d) acting in any other capacity on behalf of the Owners when approval by the Owners is required and has been obtained. Acceptance of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property is appointment of the Association as the grantee's attorney-in-fact for the purposes provided for herein, and the Association has full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner that may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE 15 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 15.1 Addition of Unspecified Real Estate. Subject to the restrictions set forth in Section 222 of CCIOA, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

Section 15.2 Reserved Development Rights. Without in any way being bound to do so, Declarant reserves the right, for itself and any successor Declarant, at any time and from time to time, to exercise the following development rights within the Community: to create, add to, expand, contract, or eliminate Units, Common Elements, or Limited Common Elements and to subdivide, re-subdivide, or combine Units or convert Units into Common Elements and convert Common Elements into Units, to assign parking spaces, and porches, balconies, decks, patios, or courtyards as Limited Common Elements, to modify or complete construction in connection therewith and to exercise all such rights on the Property, and including, without limitation, on those Common Elements described on the Map as "Declarant Reserved Development Area." Declarant may exercise this right, without the necessity of the consent thereto or the joinder therein by the Owners, the Association, Mortgagees, or any other person by recording an amendment to this Declaration and the Map. The exercise of development rights shall comply with the requirements of CCIOA, be at Declarant's sole and absolute discretion, and in such sequences or order as Declarant shall elect. No assurances are made by the Declarant regarding the exercise of development rights as to whether the Declarant will exercise its development rights or the number of Units or Common Elements that may be created, or the sequence or order in which development rights will be exercised, if at all. For purposes of determining rights of withdrawal, all

portions of the Property other than a building containing Units (and the appurtenant Common Elements) created by this Declaration or any amendment hereto, shall be considered “a portion of real estate” subject to the right of withdrawal under the provisions of C.R.S. 38-33.3-210 of CCIOA. In order to exercise the rights described in this Section 15.2, Declarant shall have the right to use the Common Elements and any Units that it owns within the Community for construction staging, storing, parking and operations, crane location and operation, and all other reasonable construction activities in furtherance of the exercise of the development rights. In the event that Declarant converts all or portions of the Common Elements to a Unit pursuant to this Section 15.2, that portion of the Common Elements converted to a Unit shall no longer be a Common Element within the Community. Declarant shall have the right to construct utilities upon the Common Elements in order to serve any Units constructed upon the Property.

Section 15.3 Other Reserved Rights. Declarant reserves the right for itself, without consent of any Owner, Mortgagee or any other third party being required, at any time and from time to time to exercise any special Declarant right reserved in this Declaration or as permitted by CCIOA, including, without limitation, the following: (a) complete improvements required or desired to complete the Community, including, without limitation, those indicated on the plats and Maps, (b) maintain and relocate sales offices, management offices, signs advertising the Community and models, of any size within one or more Units and within the Common Elements; (c) to appoint or remove any officer of the Association or any Director during the Period of Declarant Control as set forth in Section 5.4 above; (d) to establish, vacate and relocate easements, including specifically, utility easements, and access easements; (e) to amend the Map to (i) insure that the language and all particulars that are used on the Map and contained in the Declaration are consistent, (ii) establish certain Common Elements as Limited Common Elements, (iii) to reflect the subdivision or combination of any Unit as provided hereunder, and (iv) as may be otherwise permitted by CCIOA; (f) to specify permitted uses or disallowed uses in Live/Work Units; and (g) to exercise any other Declarant rights or development rights provided for in this Declaration. For so long as Declarant may exercise special Declarant rights and development rights, Owners, by acceptance of a deed to their respective Units, shall be deemed to have delegated to Declarant all rights to apply for, submit, negotiate, seek approval of, approve of and implement any subdivision, site plan or similar land use entitlement document or process necessary or desirable to carry out the ongoing development of the Property, and such Owners hereby irrevocably appoint the Declarant as the Owner’s true and lawful attorney-in-fact for such purposes.

Section 15.4 Change in Allocated Interests. In the event Declarant exercises the right to add, withdraw, convert, subdivide, re-subdivide, or combine Units as set forth above, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.3 above.

Section 15.5 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by CCIOA, twenty (20) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE 16  
ALTERATIONS, ADDITIONS OR IMPROVEMENTS  
TO COMMON ELEMENTS

DECLARANT SHALL BE EXEMPT FROM THE PROVISIONS OF THIS ARTICLE 16 UNTIL SUCH TIME AS ITS DECLARANT RIGHTS EXPIRE PURSUANT TO SECTION 15.5 ABOVE

Section 16.1 Alterations, Additions or Improvements to Common Elements. Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to the Common Elements of any kind (including, without limitation, change in color or texture of exterior surfaces, street numbers, signage, doors or windows), or which in any manner affect the Common Elements (by way of example and not by way of limitation, addition of air conditioning units, hot tubs, spas, fireplaces, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the Executive Board, except such alterations, additions, modifications or improvements that Colorado or federal law may require to be permitted on a Limited Common Element appurtenant to an Owner's Unit. All alterations, additions or improvements shall comply with any Rules and Regulations adopted by the Executive Board governing architectural or design considerations, signs, window coverings, lighting or other alterations, additions or improvements. During the period specified in Section 15.5 above, Declarant is exempt from any requirement to obtain approval under the provisions of this Article 16. The Executive Board shall respond to any written request for approval of a proposed addition, alteration, or improvement within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Executive Board may require in conjunction therewith. If the Executive Board fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials, and other requested information, the request is deemed disapproved by the Executive Board. In the event the Executive Board approves any such alteration, addition, or improvement, it shall exercise reasonable business judgment to the end that any modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested change.

Section 16.2 Governmental Approval. If any application to any governmental authority for a permit to make any such alteration, addition, or improvement requires execution by the Association, and provided approval has been given by the Executive Board, then the application shall be executed on behalf of the Association by an authorized officer. Notwithstanding this execution, no liability shall be incurred by the Executive Board, the Association, or any of them to any contractor, subcontractor, or materialman on account of such alteration, addition or improvement, or to any person having a claim for injury to person or damage to property arising therefrom.

Section 16.3 Architectural Review. In connection with its power under this Article 16, the Executive Board shall have the right, without the obligation, to establish and administer architectural or design guidelines; sign guidelines and criteria; window covering guidelines and lighting guidelines; review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Common Elements (whether General or Limited); and such other matters as the Executive Board may request.

Section 16.4 Association Right to Remove. The Association, after reasonable notice to the Owner of the offending Unit, may remove any alterations, additions, or improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal. Such expenses shall be a Default Assessment.

Section 16.5 Variance. The Executive Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article, in order to comply with federal or state law, or to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments (1) shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements within the Community; (2) shall not be contrary to the general intent and purpose hereof; and (3) shall not set a precedent for any other applicant.

Section 16.6 Waivers. The approval or consent of the Executive Board to any application for architectural approval is not a waiver of any right to withhold or deny approval or consent by the Executive Board as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

Section 16.7 Waiver of Liability. NEITHER DECLARANT, THE ASSOCIATION, THE EXECUTIVE BOARD, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS IS RESPONSIBLE OR LIABLE FOR (i) ANY DEFECTS, ERRORS OR OMISSIONS IN ANY PLANS OR SPECIFICATIONS SUBMITTED, REVISED OR APPROVED UNDER THIS ARTICLE 16, (ii) ANY DEFECTS, ERRORS OR OMISSIONS IN CONSTRUCTION PURSUANT TO SUCH PLANS AND SPECIFICATIONS, (iii) ANY MISTAKE IN JUDGMENT, NEGLIGENCE, OR NON-FEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE ANY SUCH PLANS OR SPECIFICATIONS, OR (iv) THE FAILURE TO ENFORCE THE COVENANTS AND RESTRICTIONS CONTAINED IN THIS DECLARATION. A consent or approval issued by the Executive Board under this Article 16 means only that the Executive Board believes that the construction alteration, installation or other work for which the consent or approval was requested complies with the Rules and Regulations and procedures adopted by the Executive Board. No such consent or approval shall be interpreted to mean that construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, (b) is free from defects, errors or omissions, or (c) lies within the boundaries of the Unit. No consent or approval issued by the Executive Board relieves Owners or other third parties from their obligations to comply with laws, rules, regulations, ordinances and other requirements of governmental or quasi-governmental authorities.

## ARTICLE 17 MORTGAGEE'S RIGHTS

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

Section 17.1 Title Taken by First Mortgagee. Any First Mortgagee of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) for all other unpaid Assessments to the extent that the Association's lien is superior to the Mortgage under §316 of CCIOA.

Section 17.2 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee against the Unit.

Section 17.3 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges that are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new property insurance coverage on the lapse of a policy for such Common Elements, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 17.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee that has an interest or prospective interest in any Unit or the Community, and upon payment in advance by such Agency or Mortgagee of the estimated cost as determined by the Board, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.

Section 17.5 Notice of Action. Any First Mortgagee and any Agency that holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and Unit number on which it holds the Mortgage), will be entitled to timely written notice of:

17.5.1 Any condemnation or casualty loss that affects either a material portion of the Community or the Unit secured by the Mortgage;

17.5.2 Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which the Mortgagee holds the Mortgage;

17.5.3 A lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

17.5.4 Any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 17.6 Action by Mortgagee. If this Declaration requires First Mortgagees to approve or consent to amendments, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each First Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. A First Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed amendment.

## ARTICLE 18 DURATION OF COVENANTS AND AMENDMENT

Section 18.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of CCIOA.

Section 18.2 Amendment. This Declaration, or any provision of it, may be amended at any time by approval of Owners to which at least a majority of the votes in the Association are allocated, except that approval shall first be obtained from fifty-one percent (51%) of First Mortgagees if the amendment is materially adverse to First Mortgagees.

Section 18.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, unless at least fifty-one percent (51%) of First Mortgagees have given their prior written approval, the Association may not, by act or omission seek to abandon or terminate the condominium regime hereby or to convey the Common Elements. For so long as Declarant owns a Unit at within the Community, Declarant shall have the right to approve any amendment to this Declaration.

Section 18.4 Execution of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by a certificate of the Secretary of Association to the recorded instrument certifying the approval of the amendment by a



sufficient number of Owners and First Mortgagees, if applicable. Notwithstanding the foregoing, subject to the terms of its First Mortgage, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and CCIOA.

Section 18.5 Declarant's Right to Amend. Subject to the terms of its First Mortgage, Declarant reserves the right to amend this Declaration, or the Map, Articles of Incorporation or Bylaws, without the consent of Owners or any Mortgagees, (1) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement; (2) to comply with any requirements of CCIOA or amendments thereto, or any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages; and (3) as provided in Article 15 above.

#### ARTICLE 19 LIMIT ON TIMESHARING

No Unit shall be used (a) for the operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years; or (b) for the operation of a reservation or time-use system among co-Owners of a Unit managed by a party other than the co-Owners themselves or a system whereby co-Owners are required as a condition of purchase of a fractional interest in the Unit to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

#### ARTICLE 20 DISPUTE RESOLUTION

Section 20.1 Intent of Article; Applicability of Article; Applicability of Statutes of Limitation.

20.1.1 Agreement to Forego Court Action. Each Party (as defined below) agrees to work toward amicably resolving disputes, without the emotional and financial costs of litigation. **Accordingly, each Party agrees to resolve all Claims (as defined below) only by using the procedures set forth in this Article 20 (in the order set forth in Sections 20.4 and 20.5 below) and not by litigation.** Further, each Party agrees that the procedures in this Article 20 shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of this Article 20, such action shall be dismissed and such Party shall reimburse all costs and expenses, including attorneys' fees and court costs, incurred by the other Party in such litigation or action within 10 days after written demand.

20.1.2 Article Binding on All Owners. By acceptance of a deed for a Unit, each Owner agrees to be bound by and to comply with this Article 20. The Association agrees to be bound by and to comply with this Article 20.

20.1.3 Statute of Limitations Period. No Claim may be initiated after the date set forth in an applicable Limited Warranty, and if the Claim is not covered by such Limited Warranty, then when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose or as otherwise limited by this Article 20.

Section 20.2 Definitions Applicable to This Article. For purposes of this Article only, the following terms have the meanings set forth in this Section:

20.2.1 “AAA” means the American Arbitration Association.

20.2.2 “Claimant” means any Party having a Claim.

20.2.3 “Claim” means, except as excluded or exempted by the terms of this Article, any claim, counterclaim, cross-claim, third-party claim, grievance or dispute between one Party and another, regardless of how it may have arisen or on what it might be based (including, but not limited to, damages, indemnity, subrogation or contribution), including, without limitation, disputes arising out of or related to, regardless of the theory of liability: (i) the interpretation, application or enforcement of any Governing Document or the Limited Warranty; (ii) the location, size, planning, sale, marketing, development, design, construction, maintenance, repair and/or condition of the Units, Common Elements and Community, including, without limitation, the soils of the Community; (iii) any statements, representations, promises, warranties, or other communications allegedly made by or on behalf of any Party relating to any of the foregoing; (iv) the Colorado Consumer Protection Act; and (v) damages or loss to, or the loss of, real or personal property or personal injury caused by a defect in the design or construction of the Units, Common Elements and/or Community.

20.2.4 “Inspecting Party” means a Party causing an inspection of the Subject Property to be made.

20.2.5 “Limited Warranty” means a written limited warranty given to a Party related to a Unit.

20.2.6 “Party” means each of the following: (i) architects, engineers, contractors, subcontractors, developers, Declarant and affiliates of Declarant, builders, builder vendors, engineers and inspectors performing or furnishing the design, supervision, inspection, construction or observation of construction of any improvement to real property that is a part of the Community or any other party responsible for any part of the design, construction, repair or maintenance of any portion of the Community, and any of such parties’ affiliates, and the officers, directors, partners, shareholders, members, managers, employees and servants of any of them (each a “Development Party” and collectively, the “Development Parties”); (ii) all Owners, Owner’s Agents, the Association (including its directors and committee members) and all other Persons subject to this Declaration, their officers, owners, employees and agents; and (iii) any Person not otherwise subject to this Declaration who agrees to submit to this Article Twenty.

20.2.7 “Respondent” means any Party against whom a Claimant asserts a Claim.

20.2.8 “Subject Property” means the property and all improvements thereon regarding which a Party contends that a Claim pertains, and/or property and all improvements thereon being inspected and/or repaired under the inspection and correction right in Section 20.4 below.

20.2.9 “Termination of Mediation” means a period of time expiring 20 days after a mediator has been agreed upon by the Parties or chosen by AAA if the Parties cannot agree, or within such other time as agreed to by the Claimant and Respondent in writing, and upon the expiration of which the Claimant and Respondent have not settled the Claim.

Section 20.3 Exclusions from “Claim”. Unless specifically exempted by this Article 20, all

Claims between any of the Parties shall be subject to the provisions of this Article 20. Unless all Parties thereto otherwise agree in writing, "Claim" does not include the following, which shall not be subject to the provisions of this Article 20:

20.3.1 an action by the Association to enforce the provisions of of the Governing Documents (other than this Article Fourteen) against an Owner or Permittee;

20.3.2 any action by the Association to assess or collect any Assessments or to enforce or foreclose any Assessment lien;

20.3.3 any action, suit or proceeding to compel arbitration of a Claim or to enforce any award or decision of an arbitration conducted in accordance with this Article Fourteen or to enforce the terms of any written settlement agreement of a Claim;

20.3.4 any action pursuant to the provisions of this Declaration concerning mechanics liens; and

20.3.5 Any action between or among Owners, which does not include Declarant or the Association as a party, if such action asserts a Claim which would constitute a claim for relief independent of the Association Documents.

Section 20.4 Notice; Right to Inspect and Correct. Before the earlier of, as applicable (a) the service of a Notice of Claim as described in Colorado's Construction Defect Action Reform Act ("CDARA"), or (b) initiating arbitration under Section 20.5 below (each referred to herein as "Commencing a Formal Claim"), the Claimant shall first comply with the procedures set forth in this Section 20.4 in the order noted below.

20.4.1 Notice. First, the Claimant shall provide notice to everyone Claimant contends contributed to the alleged problem. The notice shall state plainly and concisely: (i) the nature of the Claim, including all Persons involved and each Respondent's role in the Claim; (ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) and the specific relief and/or proposed remedy sought.

20.4.2 Right to Inspect and Correct. Second, if the Claim involves an alleged defect or damage to or duty to repair or replace, any improvement or real property, then Claimant shall also provide Respondent, for a period of 60 days after delivery of the foregoing notice ("Inspection/Correction Period"), the right to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage. In exercising these inspection and correction rights, the Inspecting Party and Respondent shall:

20.4.2.1 Act carefully to avoid unreasonable intrusion on, or harm, damage or costs to the other Party including using its best efforts to avoid causing any damage to, or interference with, any improvements on the Subject Property at issue;

20.4.2.2 Attempt to minimize disruption or inconvenience to any Person who occupies the Subject Property;

20.4.2.3 Remove daily all debris caused by the inspection and remaining on the Subject Property; and

20.4.2.4 In a reasonable and timely manner, at the sole cost and expense of the Inspecting Party, promptly remove all equipment and materials from the Subject Property, repair and replace all damage, and restore the Subject Property to its pre-inspection condition unless the Subject Property is to be immediately repaired.

The Inspecting Party and Respondent shall not permit any lien arising from the inspection to attach to the Subject Property.

20.4.3 Discussion of Claim. Third, in the event that (1) by the end of the Inspection/Correction Period described above, Respondent has elected not to access, inspect, correct the condition of, or redesign any portion of any improvement or real property allegedly containing a defect or damage or otherwise correct the alleged defect or damage, (2) by the end of the Inspection/Correction Period, Claimant is unsatisfied with actions undertaken by Respondent under Section 20.4.2 above, or (3) the Claim does not involve an alleged defect or damage to any improvement or real property, then before Commencing a Formal Claim against any Respondent, the Parties shall first make every reasonable effort to meet in person and confer to resolve the Claim by good faith negotiation. The Parties shall seek to understand clearly the Claim and resolve as many aspects or issues as possible. Any Party may be represented by attorneys and independent consultants to assist such Party, including by attending all negotiations.

20.4.4 Mediation. Fourth, if the Parties cannot resolve the Claim through negotiations under Section 20.4.3 above after attempting to do so for 15 days, Claimant shall have an additional 10 days to submit the Claim to mediation under the auspices of the AAA under the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

20.4.4.1 If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have fully and finally waived the Claim for all purposes, such that all Respondents shall be deemed released and discharged from all liability to Claimant for such Claim.

20.4.4.2 Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If mediation ends without a settlement, the mediator shall issue a notice of Termination of Mediation. This notice shall state that the Parties are at an impasse and the date that mediation was terminated.

20.4.4.3 Each Party shall pay its own costs of the mediation, including its own attorneys' fees. Each Party shall share equally all of the mediator's charges. The mediation proceedings shall be conducted at a mutually agreeable location in the County.

20.4.4.4 If the Parties resolve any Claim through negotiation or mediation under Section 20.4.3 above or this Section 20.4.4, and any Party later fails to comply with a written settlement agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such written agreement without the need to again comply with such procedures. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and costs.

Section 20.5 Commencing a Formal Claim.

20.5.1 Only after receiving a notice of Termination of Mediation may a Claimant Commence a Formal Claim.

20.5.2 Before the Association may Commence a Formal Claim, the Board must first also comply with the following:

20.5.2.1 Provide written notice to all Owners and Respondent(s) calling a meeting to discuss the potential Claim (“Homeowner Notice”). The Homeowner Notice must be made in accordance with applicable State and local laws, and also included in such notice shall be the following if not already required by such laws:

20.5.2.1.1 The Approval Deadline (defined below);

20.5.2.1.2 If the Association were to prevail, what the Board expects that the Association may recover from the Respondent(s);

20.5.2.1.3 Whether the Board intends to enter into a contingency fee arrangement with the attorneys’ representing the Association, and how much of the amount the Association recovers from the Respondent(s) will be paid to the attorney(s). What the Board estimates that, in addition to attorney fees, the Association will incur for consultants, expert witnesses, depositions, filing fees, and other expenses of pursuing the Claim;

20.5.2.1.4 If the Association makes a Claim and does not prevail, what the Board expects the Association will incur in witness and attorneys’ fees and other costs;

20.5.2.1.5 If the Association does not recover from the Respondent(s), what it may have to pay to repair or replace any claimed defective work;

20.5.2.1.6 A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, the market value of the affected Units could be adversely affected;

20.5.2.1.7 A statement that until any claimed defective work is repaired or replaced, or until the Claim is concluded, Owners of affected Units may have difficulty refinancing and prospective buyers of the affected Units may have difficulty obtaining financing. In addition, a statement that certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in communities where a construction defect is claimed. In addition, a statement that certain lenders as a matter of policy will not refinance or provide a new loan in communities where a construction defect is claimed;

20.5.2.1.8 An estimate of the length of time it will take to reach a final resolution of the Claim (including appeals);

20.5.2.1.9 How the Association intends to finance the pursuit of the

Claim (i.e., Special Assessments);

20.5.2.1.10 An affirmation from each Board member voting in favor of pursuing the Claim that the foregoing are true and correct; and

20.5.2.1.11 Any statement desired to be included in the notice by any Board member voting against pursuing the Claim.

20.5.2.2 Require that repair estimates be given by contractors other than those recommended by the Association's attorneys.

20.5.2.3 The Association meeting must be held no earlier than 10 days and no later than 15 days after the date of the Homeowner Notice. At the meeting the Respondent(s) must have an opportunity to address the Owners and the Board. Following the meeting and prior to the Association Commencing a Formal Claim, the Association must obtain the written approval to pursue the Claim from Owners of Units to which a majority of the total votes in the Community (excluding votes allocated to Units owned by Declarant if Declarant is a Respondent) are allocated. The Association must obtain such written Owner approval within 90 days after delivery of the Homeowner Notice or the Claim is deemed fully and finally released and may not be brought in any manner by the Association or the Owners ("Approval Deadline"). The votes of the Owners must be certified by an Association officer or agent, and written evidence of the certification shall be provided to the Respondent(s).

20.5.3 Commencing a Formal Claim may only be accomplished by:

20.5.3.1 If the Claim is governed by CDARA, delivering a Notice of Claim under CDARA to Respondent(s). If the Parties fail to reach agreement on an offer of settlement pursuant to CDARA's Notice of Claim process (C.R.S. §13-20-803.5) and the Claimant elects to proceed with the Claim, then the Claim may proceed only by way of the arbitration procedures set forth below, and not by way of litigation.

Final, binding arbitration of the Claim shall be conducted under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate. Claimant must provide to Respondent a "Notice of Intent to Arbitrate," within 20 days after the conclusion of the offer of settlement procedures set forth in C.R.S. §13-20-803.5. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

20.5.3.2 If the Claim is not governed by CDARA, then only by the arbitration procedures set forth below, and not by way of litigation. Final, binding arbitration of the Claim shall be conducted under the auspices of the AAA and its Commercial or Construction Industry Arbitration Rules, as appropriate, in which event Claimant shall provide to Respondent a "Notice of Intent to Arbitrate," within 20 days after receiving the notice of Termination of Mediation. If Claimant does not timely initiate final, binding arbitration of the Claim and timely provide a Notice of Intent to Arbitrate to Respondent(s), then Claimant shall be deemed to have fully and finally

waived the Claim, and Respondent(s) shall be deemed fully and finally released and discharged from all liability to Claimant for such Claim.

20.5.4 Mandatory Arbitration Procedures. The following arbitration procedures shall govern each arbitrated Claim:

20.5.4.1 The arbitrator must be a person qualified to consider and resolve the Claim with the appropriate industry and/or legal experience.

20.5.4.2 No Person shall serve as the arbitrator where that Person has any financial or personal interest in the arbitration or any family, social or significant professional acquaintance with any Party to the arbitration. Any Person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the arbitration (“Arbitrator Disclosure”). If any Party objects to the service of any arbitrator within 14 days after receipt of the Arbitrator’s Disclosure, such arbitrator shall be replaced in the same manner as the initial arbitrator was selected.

20.5.4.3 The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted at a mutually agreeable location in the County.

20.5.4.4 The arbitration shall be presided over by a single arbitrator.

20.5.4.5 Other than the deposition of experts and Claimant, no formal discovery shall be conducted without an order of the arbitrator or express written agreement of all Parties.

20.5.4.6 Unless directed by the arbitrator, there shall be no post hearing briefs.

20.5.4.7 The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered no later than 14 days after the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

20.5.4.8 The arbitrator determines all issues about whether a Claim is covered by this Article 20. Notwithstanding anything herein to the contrary (including, but not limited to, Sections 20.5.4.9 and 20.5.4.10 below), if a Party contests the validity or scope of arbitration in court, the arbitrator or the court shall award reasonable attorneys’ fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

20.5.4.9 The arbitrator shall apply the substantive law of Colorado with regard to any remedy granted. The arbitrator may award injunctive relief or any other remedy available in Colorado but shall not have the power to award punitive damages, attorneys’ fees and/or costs to the prevailing Party. Except as set forth in Section 20.5.4.8 above, each Party is responsible for any fees and costs incurred by that Party. Any

judgment upon the award rendered by the arbitrator may be entered in and enforced by any court of competent jurisdiction. Notwithstanding the foregoing, if the remedy awarded by the arbitrator is substantially affected by the arbitrator's failure to follow the substantive law of Colorado, a court may vacate or refuse to confirm the arbitrator's award on that basis.

20.5.4.10 The Parties shall pay their pro rata share of all arbitration fees and costs, including, without limitation, the costs for the arbitrator and their consultants.

20.5.4.11 The arbitrator shall have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants.

20.5.4.12 Except as may be required by law or for confirmation of an arbitration award, and except as otherwise provided in this Article 20, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration without the prior written consent of all Parties to the arbitration.

Section 20.6 Notice of Certain Claims. If a Claim includes a construction and/or design defect allegation, the Owner shall disclose the Claim and its details to his/her prospective purchasers and prospective Mortgagees.

Section 20.7 Amendment. THE PROVISIONS OF THIS ARTICLE 20 INURE TO THE BENEFIT OF DECLARANT AND ALL OTHER PARTIES DESCRIBED IN THIS ARTICLE 20, AND, NOTWITHSTANDING ANY OTHER PROVISION OF THIS DECLARATION, INCLUDING WITHOUT LIMITATION THE PROVISIONS OF ARTICLE 18 ABOVE, SHALL NOT BE AMENDED OR TERMINATED FOR A PERIOD OF 20 YEARS FROM THE DATE THIS DECLARATION IS RECORDED WITH THE CLERK AND RECORDER WITHOUT THE WRITTEN AND RECORDED CONSENT OF DECLARANT, WITHOUT REGARD TO WHETHER THE DECLARANT OWNS ANY UNIT OR OTHER PROPERTY AT THE TIME OF SUCH AMENDMENT. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 20 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE 20, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL BUYERS.

IN ANY EVENT, ANY AMENDMENT TO OR DELETION OF ALL OR ANY PORTION OF THIS ARTICLE 20 SHALL NOT APPLY TO CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE SUCH AMENDMENT OR DELETION.

Section 20.8 Waiver of Jury Trial. IN THE EVENT THAT A COURT FINDS THAT THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN THIS ARTICLE 20 ARE UNENFORCEABLE AND AS A RESULT A PARTY IS ALLOWED TO BRING A CLAIM IN COURT, ALL PARTIES AGREE THAT ANY LAWSUIT, WHETHER CLAIM, COUNTERCLAIM OR OTHERWISE, BROUGHT IN COURT SHALL BE TRIED ONLY BY A JUDGE AND NOT BY A JURY; AND EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND INTELLIGENTLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT.

Section 20.9 Conflict with Laws. IN THE EVENT THAT THE PROVISIONS OF THIS



ARTICLE 20 CONFLICT WITH ANY MANDATORY PROVISIONS OF APPLICABLE LAW, THE PROVISIONS OF THIS ARTICLE 20 SHALL BE REVISED TO THE MINIMUM EXTENT NECESSARY TO COMPLY WITH THE MANDATORY PROVISIONS OF SUCH LAWS.

NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE 20 TO THE CONTRARY, NEIGHBORWORKS CAPITAL CORPORATION, A COLORADO NONPROFIT CORPORATION IN ITS ROLE AS FIRST MORTGAGEE FOR DECLARANT'S UNITS (AND ONLY FOR SO LONG AS IT REMAINS A FIRST MORTGAGEE ON SUCH UNITS) IS EXEMPT FROM THE PROVISIONS OF THIS ARTICLE 20 AND SHALL NOT BE DEEEMED A "PARTY" HEREUNDER.

ARTICLE 21  
GENERAL PROVISIONS

Section 21.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under CCIOA. Any provision in this Declaration in conflict with the requirements of CCIOA shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with CCIOA. Declarant shall have the right to assign its rights, obligations, or interests herein to any person or entity (including any First Mortgagee of Declarant) by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 21.2 Notice. Unless otherwise required by applicable law or this Declaration, any requirement to deliver any notice, statement, demand, document or record to an Owner shall be deemed satisfied by sending the same to the applicable Owner by electronic delivery if the Owner has provided an electronic mail or delivery address to the Association. Otherwise, an Owner shall register his mailing address with the Association, and any notice, statement, demand, document or record intended to be delivered to an Owner must be sent by U.S. mail, postage prepaid, addressed in the name of such person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice, statement, demand, document or record may be delivered or mailed to such Owner at the address of such Owner's Unit, and if none, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

Section 21.3 Enforcement. All provisions of this Section 21.3 are subject to the provisions of Article 20 above, and shall only apply to those matters not constituting a Claim under the provisions of Article 20 above. The Association on behalf of itself and any aggrieved Owner has a right of action for any matter not constituting a Claim under Article 20 above against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this Section, the Association or any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by binding arbitration. Except as provided in Section 20.5.3 above, the prevailing party in any arbitration or judicial relief is entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents is not a waiver of the right to enforce any provision thereafter. The decision of the Association to pursue enforcement action in any particular case is left to the Board's discretion, subject to the duty to exercise its business judgment, and not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further

action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based on hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 21.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 21.5 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration controls. In case of conflict between the Articles and the Bylaws, the Articles control.

Section 21.6 Disclosures and Owners' Acknowledgment. Declarant discloses, and each Owner by virtue of accepting a conveyance of a Unit hereby acknowledges, that:

21.6.1 the Community is located adjacent to the Boulder Municipal Airport. Boulder Municipal Airport is a general aviation airport providing business, private, recreations and emergency aviation services to the City of Boulder and surrounding communities, and is open twenty-four (24) hours a day, seven days a week. Such proximity may result in aircraft noise, light, vibration and electrical interference. All property within the Community is subject to the terms of an Avigation Easement, recorded on April 20, 2016 at Reception No. 035130161 in the office of the Clerk and Recorder. The easement grants consent to overflying aircraft, and the right to cause noise, vibrations, fumes, dust, smoke, fuel particles, and all other annoyances and influences that may be caused by the operation of aircraft landing at or taking off from or operating at or on the airport. Further, Owners agree to not use their Units or the Common Elements in such a manner as to create electrical interference with navigational signals or radio communications at the airport and with aircraft, or which mimics airport lights, or which results in glare affecting aircraft, or which otherwise endangers the landing, take-off, and passage of aircraft.

21.6.2 Owners further acknowledge that the Community is in close proximity to Valmont Bike Park and other commercial and recreational uses. Such proximity may increase visual impacts, and the presence of noise, odors, parking, traffic, vibration and other uses by persons using or visiting such facilities. Further, the Community is located in close proximity to natural wildlife habitat, which may include wildlife that is dangerous to persons or domesticated animals. Residents should exercise care in the presence of wildlife and avoid conflicts with wildlife.

21.6.3 The Community consists of many attached Units, and the proximity of such Units as well as the connection of Units may lead to higher noise levels as well as other disruptions, annoyances or inconveniences inherent in attached occupancy properties.

[Remainder of Page Intentionally Left Blank – Signatures on Following Pages]

In witness whereof the Declarant has set its hand and seal on the day and year first set forth above.

DECLARANT:  
Thistle Velo LLC, a Colorado limited liability company

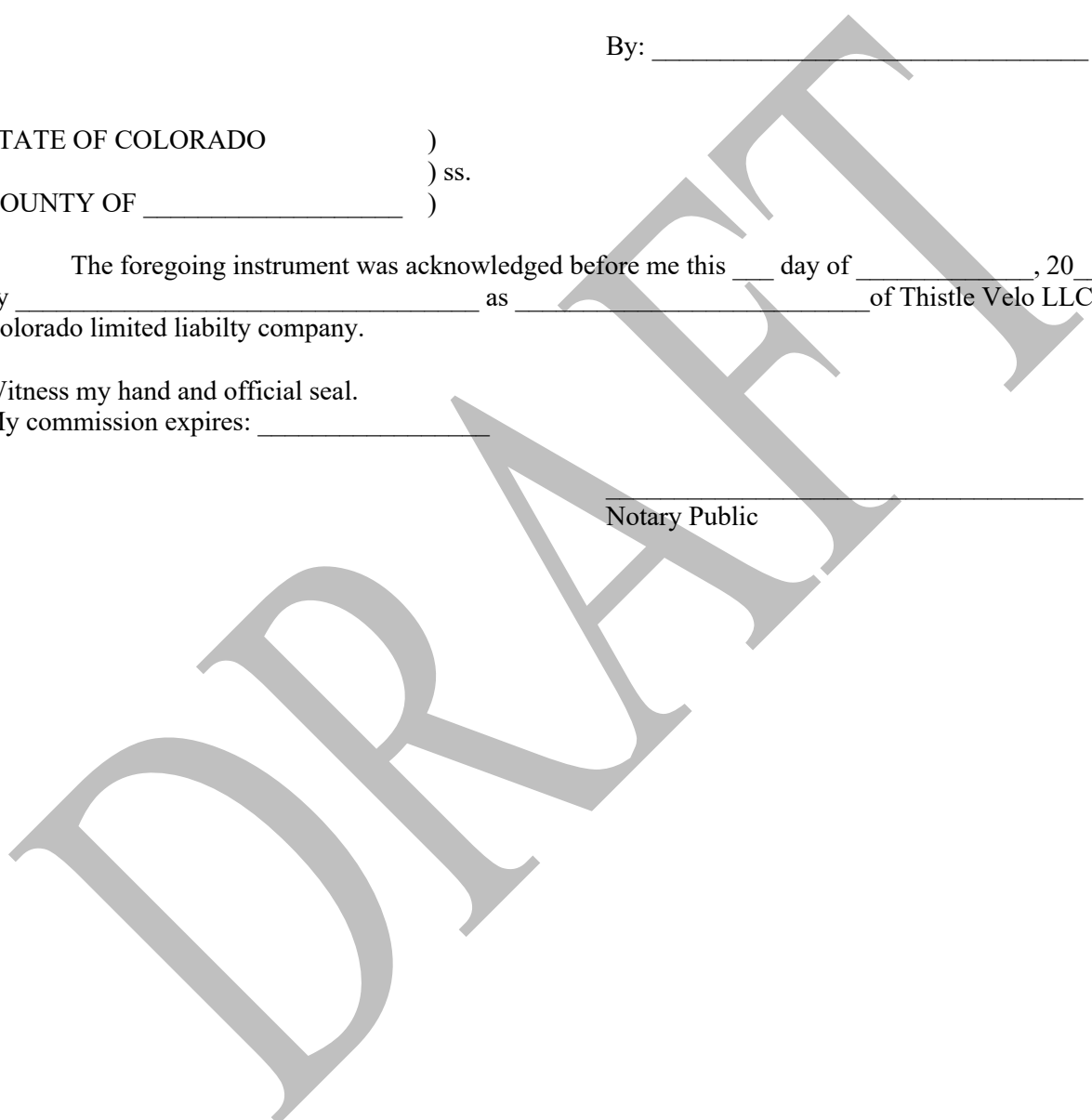
By: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_                    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Thistle Velo LLC, a Colorado limited liability company.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public





**EXHIBIT A  
TO  
CONDOMINIUM DECLARATION OF VELO  
PROPERTY SUBJECT TO DECLARATION**

Lot 1C, Airport South Replat C,  
County of Boulder, State of Colorado

DRAFT

**EXHIBIT B**  
**TO**  
**CONDOMINIUM DECLARATION OF VELO**  
(Allocated Interests)

DRAFT

**EXHIBIT C  
TO  
CONDOMINIUM DECLARATION OF VELO**

**EASEMENTS AND LICENSES ENCUMBERING THE COMMUNITY**

1. Reservations contained in the Patents

From: The United States of America  
Recording Date: December 27, 1881  
Recording No: Book 59 at Page 255

Which among other things recites as follows:

The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as provided by law.

2. Terms, conditions, provisions, agreements and obligations contained in the Ordinance No. 4734 as set forth below:

Recording Date: January 28, 1983  
Recording No.: Reception No. 530632

3. Terms, conditions, provisions, agreements and obligations contained in the Instrument of Release as set forth below:

Recording Date: August 7, 2013  
Recording No.: Reception No. 3333819

4. Terms, conditions, restrictions, provisions, notes and easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth on the Plat(s) of said subdivision set forth below:

Recording Date: November 14, 2014  
Recording No: Reception No. 3412921

5. Terms, conditions, provisions, agreements and obligations contained in the Memorandum of Understanding in Lieu of a Development Agreement for the Site Review Amendment of Airport P.U.D. and in Lieu of a Subdivision Agreement for Airport South Replat C as set forth below:

Recording Date: November 14, 2014  
Recording No.: Reception No. 3412947

6. Terms, conditions, provisions, agreements, obligations and easements contained in the Avigation Easement as set forth below:

Recording Date: April 20, 2016  
Recording No.: Reception No. 3513061

7. Terms, conditions, provisions, agreements and obligations contained in the Development Agreement as set forth below:

Recording Date: May 25, 2017  
Recording No.: Reception No. 3594219

8. Any rights, interests, or claims which may exist or arise by reason of the following matters disclosed by survey,

Project No.: 212cob12  
Dated: March 24, 2016  
Prepared by: Boulder Land Consultants, Inc.  
Matters shown: The fences on or near the perimeter of the Land may not coincide with property lines.  
Underground electric, gas and telecom lines.

DRAFT