

**CONDOMINIUM DECLARATION
OF
BASECAMP SHOPS & RESIDENCES**

Name of Common Interest Community:

BASECAMP SHOPS & RESIDENCES

Type of Common Interest Community:

CONDOMINIUM

Name of the Association:

**BASECAMP SHOPS & RESIDENCES
ASSOCIATION, INC.**

Person Executing the Declaration:

BASECAMP SHOPS & RESIDENCES LLC

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EXHIBIT LIST

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Exhibit B	Commercial and Residential Units
Exhibit C-1	General Expense Sharing Ratios and Voting Interests
Exhibit C-2	Commercial Expense Sharing Ratio
Exhibit C-3	Residential Expense Sharing Ratio
Exhibit D	Allocation of Storage Areas
Exhibit E	Allocation of Parking Spaces

**CONDOMINIUM DECLARATION
OF
BASECAMP SHOPS & RESIDENCES**

THIS CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES (this “*Declaration*”) is made as of _____, 2018, by BASECAMP SHOPS & RESIDENCES LLC, a Colorado limited liability company (the “*Declarant*”).

RECITALS

A. Declarant is owner of a leasehold interest in certain real property located in Summit County, Colorado, as more particularly described on **Exhibit A** and incorporated herein by reference (the “*Property*”).

B. Declarant is constructing a mixed-use common interest community (the “*Community*”) on the Property, and Declarant desires to convert the ownership of the residential and commercial units composing the Community and the improvements hereafter constructed on the Property in connection with such Community to the condominium form of ownership pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-33.3-319, as the same may be amended from time to time.

C. By this Declaration a plan is established for the separate fee simple ownership of the Units by the Owners thereof and ownership of certain common elements as tenants-in-common.

D. The name of this common interest community is “*Basecamp Shops & Residences.*”

**ARTICLE 1
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements, which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby assigns its right, title and interest in the Land Lease to Association and submits the Property and the Land Lease to the provisions of the Act reserving unto Declarant, ownership of the Units and all other rights of a Unit Owner of all the Units, as provided herein.

**ARTICLE 2
DEFINITIONS**

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

2.1 “**ACT**” shall mean the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101 et seq., as the same may be amended from time to time. In the event that the Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable to the property and the Project.

2.2 “**AGENCY**” shall mean any agency or corporation that purchases, insures or guarantees residential mortgages, including the United States Housing and Urban Development (HUD), the United States Department of Veterans Affairs (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Small Business Administration and the Colorado Housing and Finance Authority.

2.3 “**ALLOCATED INTERESTS**” shall mean with respect to any Unit the interest in all Limited Common Elements allocated for the exclusive use and benefit of the Unit, the undivided interest in all other Limited Common Elements serving the Unit as allocated in this Declaration, the undivided interest in all General Common Elements as allocated in this Declaration, and the Voting Interest allocated to the Unit. All undivided interests in Common Elements are allocated according to the Expense Sharing Ratios applicable to the relevant Common Element among Unit Owners pursuant to this Declaration and are subject to change as provided in this Declaration.

2.4 “**ARTICLES**” shall mean the Articles of Incorporation for Basecamp Shops & Residences Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.5 “**ASSESSMENTS**” shall mean the General, Special and Default Assessments levied pursuant to Article 9 below.

2.6 “**ASSOCIATION**” shall mean Basecamp Shops & Residences Association, Inc., a Colorado nonprofit corporation, and its successors and assigns. The Association shall act by and through its Board of Directors and officers unless the Articles, Bylaws or this Declaration specifically require otherwise.

2.7 “**ASSOCIATION DOCUMENTS**” shall mean this Declaration, the Articles, the Bylaws, the Condominium Map, the design guidelines, if any, the Rules, the Policies, and any procedures, rules, regulations or policies adopted under such documents by the Association.

2.8 “**ASSOCIATION – INSURED PROPERTY**” is defined in Section 14.2.

2.9 “**BOARD OF DIRECTORS**” or “**BOARD**” shall mean the governing body of the Association.

2.10 “**BUDGET**” shall mean an annual written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared pursuant to Section 9.4.

2.11 “**BUILDING**” or “**BUILDINGS**” shall mean and refer to each building located on and constituting a part of the Project.

2.12 “**BYLAWS**” shall mean the Bylaws adopted by the Association, as amended from time to time.

2.13 “**CLASS OF UNITS**” shall mean any of the two types of Units in the Project: Residential Units and Commercial Units.

2.14 “**CLERK AND RECORDER**” shall mean the office of the Clerk and Recorder in the County of Summit, Colorado.

2.15 “**COMMERCIAL COMMON ELEMENTS**” shall mean and include the areas and Improvements located within the Community that serve generally all of the Commercial Units, including such areas and items as are designated “**CCE**” on the Condominium Map (as such Map may be duly amended from time to time) or otherwise depicted on the Condominium Map as allocated for the exclusive use of the Commercial Units, but excluding Limited Common Elements allocated to one or more, but less than all, of the Commercial Units.

2.16 “**COMMERCIAL DIRECTOR**” shall mean a member of the Board of Directors who is nominated and elected solely by the Owners of Commercial Units.

2.17 “**COMMERCIAL EXPENSES**” are defined in Section 9.2.3 below.

2.18 “**COMMERCIAL EXPENSE SHARING RATIO**” is defined in Section 9.2.4 below.

2.19 “**COMMERCIAL UNIT**” shall mean one of the Units established herein as specified in **Exhibit B**, as may be amended.

2.20 “**COMMON ELEMENTS**” shall mean all portions of the Project except the Units (including the Improvements within the Units).

2.21 “**COMMON EXPENSES**” shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws; (b) all other expenses of owning, administering, operating, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (c) all expenses incurred for the benefit of more than one Owner; (d) insurance premiums and deductibles for the insurance carried under Article 10; and (e) all expenses lawfully determined to be Common Expenses by the Board. The Common Expenses shall consist of General Common Expenses and various types of Limited Common Expenses.

2.22 “**CONDOMINIUM MAP**” or “**MAP**” shall mean the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevations of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Condominium Map and any supplements thereto are hereby incorporated herein by reference as if set forth in their entireties.

2.23 “**CONTRACTOR**” means that company, or those companies, engaged to construct the Buildings and the Units within the Building as general contractor or construction manager.

2.24 “**COUNTY**” shall mean the County of Summit, State of Colorado.

2.25 “**DECLARANT**” shall mean Basecamp Shops & Residences LLC, a Colorado limited liability company. References in this Declaration to “**Declarant**” will mean and include all Successor Declarant(s) to the extent of the rights of Declarant duly assigned and conveyed by Declarant (or its Successor Declarant) to each such Successor Declarant.

2.26 “**DECLARATION**” shall mean this Declaration and the Condominium Map, and amendments and supplements to the foregoing.

2.27 “**DEED RESTRICTION**” is defined in Section 13.3 below.

2.28 “**DEED RESTRICTED UNIT**” shall mean a Residential Unit required to comply with the Deed Restriction and identified on **Exhibit B**.

2.29 “**DEVELOPMENT RIGHTS**” shall mean and refer to those rights defined as “Development Rights” under Section 103(14) of the Act that are reserved for the benefit of the Declarant in accordance with the specific terms and conditions of this Declaration, including the following rights:

2.29.1 to create Units or Common Elements within the Project in accordance with Sections 17.1 and 17.2 below; and

2.29.2 to subdivide Units or convert Units into Common Elements in accordance with Section 17.1 below, subject to any required approvals from the Town.

2.30 “**ENVIRONMENTAL LAW**” shall mean any federal, state or local law, whether common law, court or administrative decision, statute, rule, regulation, ordinance, court order or decree, or administrative order or any administrative policy or guidelines concerning action levels of a governmental authority (federal, state or local) relating to the environment, public health, occupational safety, industrial hygiene, any Hazardous Materials (including the disposal, generation, manufacture, presence, processing, production, release, storage, transportation, treatment, or use thereof), or the environmental conditions on, under, or about the Property, as amended and as in effect from time to time, including the following statutes and all regulations thereunder as amended and in effect from time to time: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. §§ 11001, *et seq.*; the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §§ 3251 *et seq.*, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801, *et seq.*, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901, *et seq.*; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, *et seq.*; and any successor statutes and regulations to the foregoing.

2.31 “**ESTOPPEL CERTIFICATE**” is defined in Section 24.3 below.

2.32 “**EXPENSE SHARING RATIOS**” shall mean: (a) the General Expense Sharing Ratio as set forth in **Exhibit C-1**; (b) the Residential Expense Sharing Ratio as set forth in **Exhibit C-3**, (c) the Commercial Expense Sharing Ratio as set forth in **Exhibit C-2**, and (d) Limited Expense Sharing Ratios. The formulas for determining the respective Expense Sharing Ratios are set forth in Section 9.1 below.

2.33 “**FIRST MORTGAGE**” shall mean 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.

2.34 “**FIRST MORTGAGEE**” shall mean any person named as a Mortgagee in any First Mortgage when the holder has notified the Association, in writing, of its name and address and that it

holds a First Mortgage on a Unit. The notice must include the address of the Unit on which it has a First Mortgage.

2.35 “**GENERAL ASSESSMENT**” shall mean the Assessment levied pursuant to the annual Budget as provided in Section 9.5.

2.36 “**GENERAL COMMON ELEMENTS**” are all tangible physical properties of this Project, other than Limited Common Elements and the Units. The General Common Elements include (a) the Land Lease and all portions of the Property not otherwise designated on the Map or in this Declaration as a part of Unit or as a Limited Common Element, including all rights to the common parking areas provided under the Land Lease, (b) all easements and off-site entitlements included with or running for the benefit of the Property (whether in title or by contract), (c) all alley and perimeter sidewalks located on the Property (or any portion thereof) adjacent to any public street, if any, (d) management offices, engineering office and group facilities, if any, not otherwise designated on the Map or in this Declaration as a Limited Common Element, (e) driveways and lanes to the Parking Spaces, unless otherwise allocated on the Map or in this Declaration as a Limited Common Element, (f) bearing walls of or within the Buildings that are allocated on the Map or in this Declaration as a General Common Element, (g) the foundation and main or bearing subflooring of the Buildings, (h) mechanical and equipment rooms designated on the Map as a General Common Element, (i) all monument or directional signage, if any, mail boxes and stands, irrigation systems for the Project, and all exterior lighting located within the Project not otherwise designated on the Map or in this Declaration as a Limited Common Element, (j) those items identified on the Condominium Map as “GCE” or General Common Elements, and (k) those parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

2.37 “**GENERAL COMMON EXPENSES**” are all Common Expenses incurred in connection with the ownership, administration, operation, management and Repair Work for the General Common Elements, including those expenses identified in Section 9.2.1 below.

2.38 “**GENERAL EXPENSE SHARING RATIO**” is defined in Section 9.2.2 below.

2.39 “**GOOD STANDING**” shall mean that an Owner is no more than thirty days late in the payment any General, Special or Default Assessments, and has none of his, her or its membership privileges suspended.

2.40 “**GROSS FLOOR AREA**” shall mean the sum of the gross horizontal areas of the floors of a building. All horizontal dimensions of each floor are to be measured from the unfinished interior surface of the walls (inside of the studs, back of drywall) of a building, to the center line of party walls and to the unfinished interior surface of any walls abutting exit or service corridors. In computing gross floor area there shall be excluded the following: (a) any floor area devoted to mechanical equipment serving the building; (b) any floor area in a story the ceiling of which is less than four feet above grade at the nearest building line; (c) any floor area used exclusively as parking space for motor vehicles or for the storage of bicycles; (d) any floor area the ceiling of which is not greater than six feet; and (e) any floor area that is designated as a Common Element.

2.41 “**HAZARD INSURANCE**” is defined in Section 10.5.

2.42 “**HAZARDOUS MATERIALS**” shall mean (a) any chemicals, materials, or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous

materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants” or words of similar import under any applicable Environmental Law; and (b) any other chemical, material or substance, exposure to which is prohibited, limited, or regulated by any governmental authority, including, without limitation, asbestos and asbestos-containing materials in any form, lead-based paint, any radioactive materials, polychlorinated biphenyls (“**PCBs**”), or substances or compounds containing PCBs and petroleum products.

2.43 “**IMPROVEMENTS**” shall mean all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features within the Project. The foregoing shall include buildings, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, utilities facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any.

2.44 “**INCLUDING**” or “**INCLUDE**” or similar words shall mean *including, without limitation*.

2.45 “**LANDLORD**” means Brynn Grey X, LLC, a Colorado limited liability company, owner of the Property and landlord under the Land Lease.

2.46 “**LAND LEASE**” means that certain Ground Lease dated November 3, 2017 between Landlord and Declarant with respect to the Property (the legal description of which is set forth on Exhibit A) recorded on November 8, 2017, at Reception No. 1156341, as amended by that First Amendment to Ground Lease recorded on _____, 2018 at Reception No. _____ in the records of the Clerk and Recorder of the County of Summit, State of Colorado, and any amendments thereto.

2.47 “**LIABILITY INSURANCE**” is defined in Section 10.6.

2.48 “**LIMITED COMMON ELEMENTS**” are those parts of the Common Elements that are either limited to or reserved in this Declaration, so designated on the Condominium Map as “LCE”, in a recorded Supplemental Map or Declaration executed by Declarant pursuant to Article 17 or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all Owners, including those elements identified in Section 5.2.1.

2.49 “**LIMITED COMMON EXPENSES**” are those Common Expenses identified as such in this Declaration and those Common Expenses that are incurred in connection with the ownership, administration, operation, management, and Repair Work of the Limited Common Elements, including those described in Section 9.2.9 below.

2.50 “**LIMITED EXPENSE SHARING RATIO**” is defined in Section 9.2.10 below.

2.51 “**MANAGING AGENT**” shall mean a person or entity engaged by the Association to perform certain duties, powers or functions of the Association as the Board may authorize from time to time.

2.52 “**MEMBER**” shall mean any person or entity that holds membership in the Association.

2.53 “**MORTGAGE**” shall mean any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.54 “**MORTGAGEE**” shall mean any person or entity named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person or entity under such Mortgage.

2.55 “**NONPROFIT ACT**” shall mean the Colorado Revised Nonprofit Corporation Act, as set forth in Colorado Revised Statutes §§ 7-121-101 et seq., as the same may be amended from time to time.

2.56 “**OWNER**” or “**UNIT OWNER**” shall mean the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and “**OWNER**” also includes the purchaser under a recorded contract for deed covering a Unit with a current right of possession and interest in the Unit.

2.57 “**OWNER MAINTENANCE MANUAL**” means and refers to that information package provided to each Owner in connection with the first acquisition of each Unit and to the Association by the Contractor or Declarant entitled “_____ Homeowner Maintenance & Manufactured Products Guide” dated _____, as amended from time to time by Contractor or Declarant.

2.58 “**PARKING EXPENSE SHARING RATIO**” is defined in Section 9.2.8 below.

2.59 “**PARKING EXPENSES**” are defined in Section 9.2.7 below.

2.60 “**PARKING PASSES**” are those passes provided to the Association by Landlord pursuant to the Land Lease, which passes permit the non-exclusive right to park automobiles in the common parking areas described in the Land Lease.

2.61 “**PARKING SPACES**” are those parking garage spaces located within individual enclosed parking garages as identified on the Map.

2.62 “**PERIOD OF DECLARANT CONTROL**” shall begin with the appointment of the initial Board and continues until the earliest of: (a) sixty days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant; (b) two years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two years after the right to add new Units was last exercised.

2.63 “**PERMITTEES**” shall mean and include an Owner’s family, tenants, sub-tenants, contractors, subcontractors, agents, employees, licensees, and invitees and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors.

2.64 “**PLANS**” shall mean plans and specifications showing the nature, kind, scope, materials, dimensions, locations and engineering aspects of any additions or modifications proposed by any Unit Owner in accordance with subsection 18.3.2.

2.65 “**POLICIES**” shall mean the responsible governance policies of the Association adopted by the Board as required by the Act.

2.66 “**PROJECT**” shall mean the common interest community created by this Declaration and as shown on the Condominium Map consisting of the Property, the Units, the Common Elements and the Land Lease.

2.67 “**PROJECT MAINTENANCE MANUAL**” means and refers to that information package provided to the Association by the Contractor or Declarant entitled “_____ Condominium Maintenance Guide” dated _____, as amended from time to time by Contractor or Declarant.

2.68 “**PROPERTY**” shall have the meaning set forth in Recital A above.

2.69 “**REPAIR WORK**” shall mean all maintenance, repair, and replacement work, including costs of plans and specifications, inspections, supervision and other related costs. All Repair Work performed by the Association shall be performed as specified in the Project Maintenance Manual or, if not addressed in the Project Maintenance Manual, as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. All Repair Work performed by an Owner shall be performed as specified in the Owner Maintenance Manual or, if not addressed in the Owner Maintenance Manual, and as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition.

2.70 “**RESIDENTIAL COMMON ELEMENTS**” shall mean and include the areas and Improvements located within the Community that serve generally all of the Residential Units, including: (a) the roof, columns, girders, beams and supporting elements of the Building unless otherwise allocated on the Map or in this Declaration as a General Common Element, (b) the exterior and main or bearing walls of or within the structure housing the Units, unless otherwise allocated on the Map or in this Declaration as a General Common Element, (c) gates, access stairs, stairways, walkways and hallways to Residential Units, and such other areas and items as are designated “**RCE**” on the Condominium Map (as such Map may be duly amended from time to time) or otherwise depicted on the Condominium Map as allocated for the exclusive use of the Residential Units, but excluding Limited Common Elements allocated to one or more, but less than all, of the Residential Units.

2.71 “**RESIDENTIAL DIRECTOR**” shall mean a member of the Board of Directors who is nominated and elected solely by the Owners of Residential Units.

2.72 “**RESIDENTIAL EXPENSES**” are defined in Section 9.2.5 below.

2.73 “**RESIDENTIAL EXPENSE SHARING RATIO**” is defined in Section 9.2.6 below.

2.74 “**RESIDENTIAL UNIT**” shall mean one of the Units that is to be used predominantly for residential living purposes as specified in **Exhibit B**, as may be amended.

2.75 “**RULES**” shall mean the rules and regulations of the Association that govern the use of the Units, Common Elements and any property owned or managed by the Association, as amended from time to time by the Board.

2.76 “**SECURITY INTEREST**” shall mean an interest in real estate or personal property created by contract or conveyance that secures payment or performance of an obligation. The term includes a

lien created by a Mortgage, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or total retention contract intended as security for an obligation.

2.77 “**67 PERCENT OF OWNERS AND FIRST MORTGAGEES**” shall mean (a) Owners of Units owning, in the aggregate, Units to which are appurtenant at least sixty-seven percent (67%) of those Voting Interests allocated to Units (as determined under Section 9.3.1), (b) First Mortgagees, if any, that hold First Mortgages encumbering Units to which are appurtenant at least fifty-one percent (51%) of the Voting Interests of all Units encumbered by First Mortgages.

2.78 “**67 PERCENT OF OWNERS AND FIRST MORTGAGEES BY CLASS**” shall mean (a) Owners of Residential Units owning, in the aggregate, Residential Units to which are appurtenant at least sixty-seven percent (67%) of those Voting Interests allocated to Residential Units (as determined under Section 9.3.1), (b) Owners of Commercial Units owning, in the aggregate, Commercial Units to which are appurtenant at least sixty-seven percent (67%) of those Voting Interests allocated to Commercial Units (as determined under Section 9.3.1), and (c) First Mortgagees, if any, that hold First Mortgages encumbering Units to which are appurtenant at least fifty-one percent (51%) of the Voting Interests of all Units encumbered by First Mortgages.

2.79 “**SPECIAL ASSESSMENT**” is defined in Section 9.7.

2.80 “**SPECIAL DECLARANT RIGHTS**” shall mean the Development Rights and other rights expressly reserved for the benefit of Declarant in accordance with the specific terms and conditions of this Declaration.

2.81 “**STORAGE AREAS**” is defined in Section 5.4.1.

2.82 “**SUCCESSOR DECLARANT**” shall mean any person or entity to whom Declarant assigns any portion 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. Declarant may assign less than all of its rights as Declarant to more than one Successor Declarant.

2.83 “**SUPPLEMENTAL DECLARATION**” shall mean an instrument that amends this Declaration.

2.84 “**SUPPLEMENTAL MAP**” shall mean a supplemental Condominium Map of the Project that depicts any change in the Project through a Supplemental Declaration.

2.85 “**TOWN**” shall mean the Town of Frisco.

2.86 “**TOWN COVENANT**” means that certain Real Covenant and Agreement between the Town and Landlord recorded on June 4, 2013 at Reception No. 102923 with the Clerk and Recorder, as amended by that certain First Amendment to Real Covenant recorded on September 29, 2017 at Reception No. 1152989 with the Clerk and Recorder.

2.87 “UNAVOIDABLE DELAY” shall mean and include non-performance caused by fire or other casualty, national emergency, federal, state, or local governmental laws or regulations, war, civil commotion, strikes, lockouts, shortage or inability to obtain labor or materials, acts of God, or other similar causes beyond the reasonable control of an Owner.

2.88 “UNIT” shall mean, as to a Residential Unit or Commercial Unit, the fee simple interest and title in and to an individual airspace that is contained within the inside face of glass of all perimeter walls and windows, ignoring columns and extending the line of the inside face of glass for the extent of the wall containing the window or glass defining that line, as shown on the Condominium Map. For those perimeter walls not containing glass and all floors, ceilings and doors, the perimeter boundary shall be the interior face of concrete or the exterior side of the sheetrock or other material composing such surface. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Units; provided, however, that structural components (including concrete columns and pillars), which may constitute part of surrounding walls or columns, as well as any Utilities or similar facilities located within the exterior boundaries of a Unit, are nonetheless excluded from the Unit. In walls that separate one Unit from an adjoining Unit, the location of the vertical plane of the centerline of the divider wall shown on the Map shall be the common boundary between the adjoining Units. That part of the divider wall located within the boundary of the Unit shall be part of the Unit. Adjoining Units that share a divider wall shall have a cross-easement of support in the portion of the divider wall not located within the boundary of the Unit. Each Unit shall constitute a “unit” under the Act.

2.89 “UTILITIES” shall mean and include private and public utility lines, machinery or equipment of any type or nature, including wires, pipes, conduits, cables, fiber optics, and ducts for utility systems used for domestic cold and hot water, sanitary sewer, storm sewer, chilled water, condenser water, heating hot water, steam, steam condensate, natural gas, control compressed air, conditioned and non-conditioned air, ventilation and exhaust air, electricity, security, fire alarm, emergency communications, systems control and automation, video monitoring, telephone, television, high speed internet/intranet, other telecommunications systems, and other mechanical, electrical, and related life safety systems.

2.90 “VOTING INTERESTS” are defined in Section 9.3 below.

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

ARTICLE 3 CONDOMINIUM MAP

3.1 **RECORDATION AND CONTENT.** Prior to the conveyance of any Unit, the Condominium Map shall be filed for record with the Clerk and Recorder. The Condominium Map may be filed in whole or in part or in parts or sections, from time to time and may be amended from time to time as provided in this Declaration. There shall be filed for record as a part of the Condominium Map the certificate of a registered land surveyor certifying that (a) the Condominium Map substantially depicts the location and the horizontal and vertical boundaries of the Units to which it pertains; (b) such Condominium Map was prepared subsequent to substantial completion of the depicted Improvements; and (c) the Condominium Map contains all the information that is required by Section 209 of the Act.

In interpreting the Condominium Map, the existing physical boundaries of each Unit, as constructed, shall be conclusively presumed to be its legal boundaries.

3.2 **AMENDMENTS.** Except as otherwise provided herein, the Condominium Map may be amended or supplemented with the prior written approval of (i) 67 Percent of Owners and First Mortgagees, and (ii) (to the extent not otherwise included) any First Mortgagee whose lien encumbers any portion of a Unit included in the proposed amendment or supplement. In addition, subject to Section 17.5, the Association or Declarant shall be entitled to amend or supplement the Condominium Map without the approval of Unit Owners not owning affected Units: (a) to reflect completion of Units for portions of the Project as such Units are completed; (b) for the subdivision or combination of Units as permitted in this Declaration; (c) to conform the Condominium Map to the actual location of constructed Improvements; (d) to establish, vacate, convey and relocate Common Elements; (e) to establish, vacate, and relocate easements of any kind; and (f) as may otherwise be permitted by the Act.

ARTICLE 4 DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

4.1 **CREATION OF CONDOMINIUM.** Declarant hereby submits the Project to common interest ownership. The Project shall be deemed a “*Condominium*” as defined in the Act. The name of the Project is “*Basecamp Shops & Residences.*” The Association shall serve as a condominium association for the Community in accordance with this Declaration.

4.2 **DESCRIPTION OF UNITS.**

4.2.1 Subject to Declarant’s Reserved Development and Special Declarant Rights provided in Article 17 hereof, the Project is currently designed to be composed of twenty-five (25) Residential Units and six (6) Commercial Units. Each Unit will consist of a separate fee simple estate in a separately designated Unit. There shall pass with each Unit as appurtenances thereto the Allocated Interests appurtenant to that Unit and any other appurtenances as may be provided in this Declaration or the Act. The fee simple estate of each Owner shall be a fee simple determinable that terminates upon expiration of the Land Lease, as provided in Article 19 below, and upon such termination such estate shall automatically revert to Landlord or its successor-in-interest. Title to Units may be held in any form of ownership recognized in Colorado. In case of any concurrent, joint, or fractional ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of a Unit Owner with respect to the Unit in which he or she owns an interest. For all purposes herein, there shall be deemed to be only one Unit Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of a Unit Owner hereunder with respect to the Unit in which they own an interest.

4.2.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe such Unit by its identifying number as designated on the Condominium Map, followed by the name of this Project with further reference to this Declaration and the Condominium Map, and shall be substantially in the following form:

Unit _____, Basecamp Shops & Residences, according to the Condominium Declaration thereof recorded on _____, 2018, at Reception No. _____ and

the Condominium Map thereof recorded on _____, 2018, at Reception No. _____ in the records of the Clerk and Recorder of the County of Summit, State of Colorado, as amended from time to time.

Such description shall be good and sufficient for all purposes to sell, convey, transfer encumber or otherwise affect the Unit. The reference to this Declaration and the Condominium Map in any instrument shall be deemed to include any recorded Supplements or Amendments thereto.

4.3 **LAND LEASE.** The Land Lease that is part of the General Common Elements is scheduled to expire on [December 31, 2117-confirm correct date based on Rent Commencement Date]. At expiration of the Land Lease, the condominium ownership of the Project shall terminate. Upon expiration of the Land Lease, neither the Association nor any Owners shall have the right to further renew the Land Lease, to redeem the reversion or to remove any Building improvements, except personal property belonging to the Association or an Owner, and shall have no further rights in the real property or the Building. No Owner's interest in the Land Lease shall be affected by the failure of any other Owner to pay rent or fulfill any other Land Lease covenant. Prior to the expiration of the Land Lease, no Owner's interest in the Land Lease may be terminated so long as it makes timely payment of rent assessments to the Association and otherwise complies with all covenants that, if violated, would, but for this sentence, entitle Landlord to terminate the Land Lease.

4.4 **ASSOCIATION.** The name of the Association is the "*Basecamp Shops & Residences Association, Inc.*" Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

4.5 **IDENTIFICATION OF UNITS.** The identifying number of each Unit is shown on the Condominium Map.

4.6 **INSEPARABILITY OF UNITS.** Each Unit is inseparable, and may be conveyed, leased, devised, or encumbered only as a single Unit, except as provided in Sections 4.7 and 4.8 below. Each conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

4.7 **NON-PARTITIONABILITY OF COMMON ELEMENTS.** All Common Elements shall be owned in common by the Owners as provided in this Declaration and shall remain undivided, and no Owner or other person having an interest in a Unit may bring any action for partition or division of any of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives its right to maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and the provisions of this Section may be pled as a bar to the maintenance of any such action. Any Owner who commences such action shall be liable to the Association for all of its costs, expenses and reasonable attorneys' fees incurred in defending such action. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in Common Elements without the Unit to which that interest is allocated is void.

4.8 **COMBINATION OF COMMERCIAL UNITS.** At any time following the subdivision of a Commercial Unit in accordance with Section 4.8 below, Declarant and the Owner or Owners of one or more Commercial Units shall have the right to: (a) physically combine the entire space within one

Commercial Unit with the entire space within one or more adjoining Commercial Units; or (b) combine a part of or combination of parts of the space of one Commercial Unit with a part of or combination of parts of the space within one or more adjoining Commercial Units. The Owners other than Declarant must first (y) obtain the prior written approval of the Board and any First Mortgagee whose Mortgage encumbers one of the Commercial Units to be combined; and (z) comply with Sections 4.9 and 18.3 below before exercising their rights herein. The costs incurred for legal, architectural and engineering fees and all other costs incurred by the Association in connection with such combination of Commercial Units shall be borne by the Owners requesting such change. Notwithstanding the foregoing, Declarant shall, for a period of 25 years commencing with the recordation of this Declaration with the Clerk and Recorder, have the right to combine Commercial Units pursuant to this Section 4.7, subject only to obtaining the prior written consent of any First Mortgagee whose Mortgage encumbers the Commercial Units to be combined. Upon the combination of any Commercial Units, the Commercial Unit resulting from such combination shall be allocated the Expense Sharing Ratios, or a part thereof, of the predecessor Commercial Unit(s) in and to the Expense Sharing Ratios. Such allocation or recalculation shall be reflected by an amendment to the Schedule of Expense Sharing Ratios and shall become effective only upon the execution and recordation of such amendment containing the approvals required below. The costs incurred for legal, architectural and engineering fees and all other costs incurred by the Association in connection with such combination of Commercial Units shall be borne by Declarant or Owners requesting the combination, as the case may be. Nothing in this Section 4.7 will be deemed to permit Unit Owners to combine Commercial Units in any manner inconsistent with the Act.

4.9 SUBDIVISION OF COMMERCIAL UNITS. Declarant and the Owner or Owners of one or more Commercial Units shall have the right to subdivide the space, or a part of the space, within a Commercial Unit to create additional Commercial Units in accordance with the terms and conditions of this Section 4.8. The Owners other than Declarant must first (a) obtain the prior written approval of the Board and any First Mortgagee whose Mortgage encumbers one of the Commercial Units to be subdivided; and (b) comply with Sections 4.9 and 18.3 below before exercising their rights herein. Notwithstanding the foregoing, Declarant shall, for a period of 25 years commencing with the recordation of this Declaration with the Clerk and Recorder, have the right to subdivide Commercial Units pursuant to this Section 4.8, subject only to obtaining the prior written consent of any First Mortgagee whose Mortgage encumbers the Commercial Unit to be subdivided. Upon the subdivision of any Commercial Unit in accordance with the terms and conditions contained herein, the Commercial Units resulting from such subdivision shall have Expense Sharing Ratios calculated according to the provisions of Section 9.1 below, except in no event shall the number of votes allocated to such Commercial Units exceed the total number of votes allocated to such Commercial Units prior to subdivision. The change in Expense Sharing Ratios shall be reflected by an amendment to the Schedule of Expense Sharing Ratios and shall become effective only upon the execution and recordation of such amendment containing the approvals required below. Subdivision of a Commercial Unit may include creation of or reallocation of those Limited Common Elements allocated to the Commercial Unit being subdivided, and any such creation or reallocation shall be reflected by an amendment to the Declaration or Map. The costs incurred for legal, architectural and engineering fees and all other costs incurred by the Association in connection with such subdivision of Commercial Units shall be borne by Declarant or Owners requesting the subdivision, as the case may be. Nothing in this Section 4.8 will be deemed to permit Unit Owners to subdivide a Commercial Unit in any manner inconsistent with the Act.

4.10 PROCEDURES FOR COMBINATION OR SUBDIVISION. In order to combine or subdivide any Commercial Units as provided in Sections 4.7 or 4.8 above, the Owners (other than Declarant as to its right to subdivide or combine Commercial Units without Board approval), shall submit an

application to the Board, which shall include: (a) evidence that the proposed combination or subdivision of one or more Commercial Units complies with all building codes, fire codes, zoning codes, and other applicable ordinances adopted and enforced by the Town and the State of Colorado (however, such application need not include any required governmental approval that is subject to first obtaining Board approval, but such application must condition Board approval on obtaining any such required governmental approval prior to commencing the requested action); (b) the proposed reallocation or recalculation of the Expense Sharing Ratios; (c) the proposed form of amendments to this Declaration and the Condominium Map, as may be necessary to show the Commercial Unit or Commercial Units that are created by the combination or subdivision of a Commercial Unit or Commercial Units and their dimensions and identifying numbers and any reallocation of Limited Common Elements; (d) a deposit for fees (including attorneys' fees) and costs that the Association may incur in reviewing and effectuating the combination or subdivision, in an amount reasonably estimated by the Board; (e) a statement that the proposed combination or subdivision does not violate the terms of any Mortgage encumbering the Commercial Unit or Commercial Units; and (f) such other information requested by the Board. All costs and fees of combining, subdividing or resubdividing any Commercial Units, including all costs and fees incurred by the Association in reviewing the request (including any attorneys' or other consultants' fees), shall be borne by the applicant. In any case in which the Board's approval is required under Section 4.9, the Board shall be entitled to deny any request for combination or subdivision of Commercial Units on the basis that: (y) the combination or subdivision adversely impacts the maintenance or insurance responsibilities of the Association; or (z) for any other reason whereby the combination or subdivision adversely impacts the Project or the Association. Upon exercising any right to combine or subdivide Commercial Units, Declarant (in the case of a subdivision or combination by Declarant), or the Association shall record an amendment to this Declaration and the Condominium Map reflecting any changes resulting from the exercise of such right, sufficient to satisfy the requirements of the Condominium Map and deliver a copy thereof to each Owner.

4.11 **NO SUBDIVISION, COMBINATION OR EXPANSION.** Except as expressly provided in this Article 4 with respect to Commercial Units and except Declarant's Reserved Development and Special Declarant Rights as provided in Article 17, no portion of the Project (including the Common Elements) shall be subject to an action for division and no Units shall be subdivided, combined or expanded.

4.12 **UNITS THAT MAY BE CREATED.** The number of Units that may be created in the initial phase of development of the Project is: twenty-five (25) Residential Units and six (6) Commercial Units, for a total of thirty-one (31) Units that may be created in the initial phase of development. The maximum numbers of Units that may be created in the Project is twenty-five (25) Residential Units and twelve (12) Commercial Units, for an aggregate of thirty-seven (37) Units.

ARTICLE 5 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS

5.1 **RIGHT OF INGRESS AND EGRESS.** Every Owner and its Permittees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements allocated to such Owner's Unit (whether separately or together with other Units), plus a right and easement of ingress and egress over, across, and upon the General Common Elements for the purpose of entering and exiting such Owner's Unit, Limited Common Elements, and Parking Space from and to any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit and shall be perpetual and indefeasible; provided, however, that such rights and easements shall be subject to the following:

5.1.1 The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations now or subsequently contained in this Declaration and the Condominium Map;

5.1.2 The right of the Association to suspend the voting rights and any and all other rights of any Owner or such Owner's Permittees to the use of any facilities within the Project for (a) any period during which any Association assessment against such Owner or against such Owner's Unit remains unpaid, and (b) any period of time, not to exceed ninety days per infraction, that the Association may deem appropriate, for such Owner's infraction, or the infraction by any Owner's Permittees, of any Rule, after reasonable notice and an opportunity to be heard in accordance with the Policies;

5.1.3 The right of the Association to adopt, from time to time, Rules concerning the Units, Common Elements or any property managed by the Association, and any facilities located thereon and the use thereof, as the Association may reasonably determine is necessary or prudent, subject, however, to the restrictions set forth in Section 6.10 hereof;

5.1.4 The right of the Association to grant licenses and leases for the use and enjoyment of the General Common Elements;

5.1.5 The right of the Association and Declarant (subject to limitation on the duration of Declarant's rights under Section 17.5 below) to grant permits, licenses and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project, which do not unreasonably interfere with use of the General Common Elements and Limited Common Elements by the Owners of Units to which they are allocated;

5.1.6 The right of the Association to grant easements and rights to use the General Common Elements to the owner of adjacent improvements to the Project; and

5.1.7 The right of an Owner or the Owners of any Unit or Units to which a Limited Common Element is allocated to designate a reasonable location of any easement across such Limited Common Element.

5.2 LIMITED COMMON ELEMENTS.

5.2.1 *Limited Common Elements.* The Limited Common Elements include the following:

(a) Equipment rooms depicted on the Condominium Map that are allocated for the exclusive use of certain Units as described in this Declaration or as designated on the Condominium Map,

(b) Parking Spaces allocated for the exclusive use of certain Residential Units,

(c) Parking Passes provided under the Land Lease that may be distributed to Owners for their use by the Association from time to time,

(d) certain Utilities described below,

- (e) decks and patios allocated for the exclusive use of certain Units,
- (f) Commercial Common Elements serving principally and allocated to the Commercial Unit(s) as described in this Declaration or as designated on the Condominium Map,
- (g) Residential Common Elements serving principally and allocated to the Residential Units as described in this Declaration or as designated on the Condominium Map,
- (h) interior lobbies, access stairs, stairways, and hallways that serve fewer than all Units,
- (i) shutters, awnings, window boxes, windows, doors, entrances, exits and walkways that serve fewer than all Units,
- (j) walls or portions thereof and openings therein separating a Unit from a patio, balcony or other Limited Common Element allocated to the Unit, and
- (k) any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture that lies partially within and partially outside the designated boundaries of a Unit that serves one or more (but not all) Units.

Interior lobbies, hallways and nonstructural walls located wholly within a Unit are considered parts of the Units in which they are located and not Common Elements.

5.2.2 Utilities. Utilities are categorized by this Declaration as General Common Elements, Limited Common Elements or parts of Units. Utilities that serve only one Unit and are located wholly within such Unit are part of the Unit served. Utilities that serve only one Unit but are not located wholly within such Unit are Limited Common Elements allocated to the Unit served. Utilities that serve more than one but less than all Units are Limited Common Elements allocated to the Units served. Utilities that serve all Units are General Common Elements allocated to all of the Units.

5.2.3 Allocation of Other Limited Common Elements. Limited Common Elements that are limited to, reserved for or that serve only a single Unit are allocated to that Unit. Limited Common Elements that are limited to, reserved for or serve more than one, but less than all, of the Units and that are otherwise not allocated by the provisions of this Declaration are allocated to those Units served.

5.2.4 No Disassociation. Except as otherwise provided in this Declaration, Limited Common Elements shall not be disassociated from a Unit to which they are allocated by the Declarant, the Association or any Owner, and no reference thereto shall be required to be made in any deed, Mortgage, instrument of conveyance, or other instrument describing such Unit.

5.3 GENERAL COMMON ELEMENTS. Each Owner of a Unit owns an undivided interest and has a non-exclusive right to use the General Common Elements without hindering or encroaching upon the lawful rights of other Owners and in accordance with the Rules. Without the prior written approval of 67 Percent of Owners and First Mortgagees by Class, no General Common Element may be abandoned, partitioned, subdivided, encumbered, sold or transferred; provided, however, that

(a) easements may be granted by Declarant or the Association over General Common Elements for public or private Utilities or for other public purposes consistent with the intended use of the General Common Elements and (2) leases and licenses to use the General Common Elements may be granted by the Association to Owners or others, in each case on arms-length terms and for commercially reasonable consideration, without such approval being required. Notwithstanding the foregoing, no use of the General Common Elements shall be permitted that interferes with access to or the ordinary operations of any Unit without such Unit Owner's consent. No reference to General Common Elements shall be required to be made in any deed, Mortgage, instrument of conveyance or other instrument describing the Unit. Except as otherwise provided herein, the operation and Repair Work for General Common Elements shall be the responsibility of the Association and the cost thereof is a General Common Expense.

5.4 STORAGE AREAS.

5.4.1 *Storage Areas.* Certain Units may be allocated a storage space (each a "**Storage Area**"). Storage Areas are located throughout the Project and have been or will be allocated as Limited Common Elements to Units by Declarant. Storage Areas are depicted on the Condominium Map as "SA ____" and numbered from 1 through 25. Each Storage Area is or will be allocated for the exclusive use and benefit of a Unit Owner as indicated on **Exhibit D** attached hereto. Each Storage Area shall be a Limited Common Element allocated to such Unit and may not be assigned or transferred apart from that Unit. Any subsequent sale or conveyance of the Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the assigned Storage Area and shall cause the exclusive right to use such assigned Storage Area to vest in the purchaser of the selling Owner's Unit. Storage Areas may be reallocated among the Units with the consent of the Association, the Owner, and First Mortgagee of each Unit whose Storage Area assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act.

5.4.2 Storage Areas shall be used solely for the purpose of storing personal property belonging to the Owner or Permittee of the Unit to which such Storage Area is allocated as a Limited Common Element. Each Owner shall be responsible for maintaining the Storage Area allocated to such Owner's Unit in a sightly condition, clean and free from debris of any kind. No Owner or Permittee shall store any explosives or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the Storage Area that would cause danger or nuisance to the storage areas within the Project. The Storage Areas shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code or health code. If hazardous substances are stored, used, generated or disposed of on or in the Storage Area or if the Storage Area becomes contaminated in any manner for which the Owner or Permittee is legally liable, the Owner or Permittee shall indemnify and hold harmless Declarant, Association and the Board from any and all claims, damages, fines, judgments, penalties, costs, liabilities and losses and any sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of such contamination.

5.4.3 Notwithstanding any provisions in Section 5.4.1 to the contrary, Declarant may, as part of its Development Rights and other Special Declarant Rights, reallocate Storage Area(s) among Units owned by Declarant in any manner desired by Declarant, prior to the sale of such Units to their initial Owners (other than Declarant or its First Mortgagee), and may amend this Declaration or the Condominium Map accordingly, all without the consent of the Association,

the Board, any First Mortgagees, or any other person. Declarant's Development Rights and other Special Declarant Rights set forth in this Section 5.4.3 shall terminate on the first to occur of the twentieth anniversary of the date this Declaration is recorded or the date of conveyance of the last Unit by Declarant to the first purchaser thereof (other than Declarant or its First Mortgagee). At such time, any Storage Areas that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements to be operated and managed by the Association. Notwithstanding the provisions of this Section 5.4.3, Declarant's right to reallocate Storage Areas will not apply to Storage Areas specifically identified in any executed purchase agreement for sale of a Unit, without the prior consent of the contract purchaser.

ARTICLE 6 ASSOCIATION

6.1 ASSOCIATION GENERAL PURPOSES AND POWERS. The Association shall manage the Common Elements and personal property as provided in this Declaration, the Articles and the Bylaws. It shall have all powers necessary or desirable to effectuate such purposes, including the right to (a) operate, inspect, regulate, manage, maintain, alter, repair, replace, and charge fees in connection with the operation and use of the Common Elements; (b) enforce all provisions of this Declaration; and (c) perform all rights and obligations granted to the Association under the Association Documents. The administration and management of the Common Elements shall be governed by the Association Documents and the Rules and Policies adopted thereunder.

6.2 PERSONAL PROPERTY. The Association may acquire, hold and dispose of tangible and intangible personal property. The Owners shall have no beneficial interest in such property, except such right to enjoyment and use thereof as may be granted to the Owners by applicable Rules. Each Owner may use such personal property for its intended purpose, subject to the Rules, without hindering or encroaching upon the lawful rights of the other Owners.

6.3 BOARD OF DIRECTORS.

6.3.1 *Number and Classification of Directors.* During the Period of Declarant Control, the Board of Directors shall consist of two persons or such other number as determined by Declarant. Following expiration or termination of the Period of Declarant Control, the Board of Directors shall consist of three persons. Except as otherwise provided herein, two Residential Directors shall be nominated and elected solely by the Owners of Residential Units, and one Commercial Directors shall be nominated and elected solely by the Owners of Commercial Units. Except for members of the Board appointed by the Declarant during the Period of Declarant Control, all members of the Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Board shall be an authorized representative of such entity Member.

6.3.2 *Election of the Board.* Members of the Board shall be elected or appointed in the following manner:

(a) Declarant shall appoint, in its sole and absolute discretion, all members of the Board and all officers of the Association from the date the Association is created until sixty (60) days after the conveyance of twenty-five percent (25%) of the Units that may be created in any Class of Units to Owners other than Declarant.

(b) Not later than sixty (60) days following conveyance of twenty-five percent (25%) of the Commercial Units that may be created to Owners other than Declarant, the Commercial Director shall be appointed by vote of the Owners of Commercial Units (other than Declarant) in accordance with their respective Voting Interests (as determined under Section 9.3.1 below).

(c) Not later than sixty (60) days following conveyance of twenty-five percent (25%) of the Residential Units that may be created to Owners other than Declarant, Declarant shall appoint, in its sole and absolute discretion, one of the Residential Directors. The remaining Residential Director shall be appointed by vote of the Owners of Residential Units (other than Declarant) in accordance with their respective Voting Interests (as determined under Section 9.3.1 below).

(d) After the earliest of (i) 60 days following expiration of the Period of Declarant Control, (ii) such other time as may be required under the Act, or (iii) such other time as Declarant may, in its sole discretion determine, all members of the Board shall have been or will be appointed by vote of the Owners in the respective Class of Units (including Declarant to the extent Declarant owns one or more Units) in accordance with their respective Voting Interests (as determined under Section 9.3.1 below).

(e) Notwithstanding the foregoing, Declarant may voluntarily relinquish any power to appoint Members to the Board provided herein by executing a notice to such effect and recording such notice with the Clerk and Recorder. In such event, Declarant may, at its option, require that specified actions of the Association or the 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.

(f) Cumulative voting will be allowed in the election of the Residential Directors.

6.3.3 *Powers of the Board.* Except for those matters expressly reserved to the Members as provided in the Association Documents, the Nonprofit Act and the Act, the Board may act in all instances on behalf of the Association, to:

- (a) Adopt and amend Bylaws and Rules and Policies;
- (b) Determine Common Expenses and adopt and amend the Budget for revenues, expenditures and reserves in accordance with the Act;
- (c) Collect Assessments;
- (d) Hire and terminate a Managing Agent and other agents and independent contractors;
- (e) Delegate to a Managing Agent certain responsibilities of the Association;
- (f) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

(g) Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or other contract providing for services by Declarant to the Association shall have a maximum term of three years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety days' prior written notice;

(h) Regulate the use, maintenance, repair, replacement and modification of Common Elements;

(i) Cause additional Improvements to be made as a part of the Common Elements;

(j) Acquire, hold, encumber and convey in the name of the Association any right, title or interest in personal property;

(k) Grant easements, leases, licenses and concessions through or over the Common Elements;

(l) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (other than those Limited Common Elements described in Sections 202(1)(b) and (d) of the Act), provided that no fee, charge or payment may be assessed against any Owner or its Permittee;

(m) Enforce any Rules or Policies adopted by the Board, including enforcement by levying and collecting charges or fines for the violation thereof;

(n) Impose charges (including late charges and default interest) for late payment of Assessments, recover reasonable attorneys' 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 provisions of the Association Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within thirty days after they become due);

(o) Impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(p) Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

(q) Assign its right to future income, including the right to receive Assessments, except that such Board action will be effective only with the consent of 67 Percent of Owners and First Mortgagees;

(r) Exercise any other powers conferred by this Declaration or the Bylaws;

(s) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including those powers specified by the Nonprofit Act; and

(t) Exercise any other powers necessary and proper for the governance and operation of the Association.

6.4 **AGENCY WAIVER.** Notwithstanding anything to the contrary contained in Section 6.3.3 but subject to the limitations of applicable law, the Association may enter contracts and leases in violation of the requirement set forth in Section 6.3.3 upon the waiver by HUD, VA, FNMA, and/or FHLMC of any provisions of any of such Agencies' legal requirements that would otherwise be violated by such contracts and leases.

6.5 **SUBMISSION OF MATTERS TO OWNERS.** Notwithstanding any provision of this Declaration, the Articles, or the Bylaws to the contrary, at any time following the expiration or termination of the Period of Declarant Control, any Owner or group of Owners holding twenty percent (20%) or more of the Voting Interests (as determined under Section 9.3.1) applicable to any matter, shall have the right to require the Board to submit any decision of the Board of Directors to a vote of those Owners permitted to vote on such matter in their capacity as Members of the Association. If the Owners make a decision different from the Board by a vote of at least fifty-one percent (51%) of all eligible votes outstanding (not fifty-one percent (51%) of the votes that may be cast by Owners present at a meeting) or such higher percentage as may be specified in this Declaration or the Act, the decision of the Owners shall govern the actions of the Association.

6.6 **ARTICLES OF INCORPORATION AND BYLAWS.** The purposes and powers of the Association and the rights and obligations of the Association with respect to Owners set forth in this Declaration may be amplified, but not modified, by the provisions of the Articles and the Bylaws. In the event of a conflict between the provisions of the Articles and the Bylaws and the provisions of this Declaration, the provisions of this Declaration shall control.

6.7 **COMMON ELEMENTS.** The Association shall provide for the care, operation, management, and Repair Work for the Common Elements. Without limiting the generality of the foregoing, such obligations shall include keeping the Common Elements in good, clean, attractive and sanitary condition, order and repair; repair of the exterior areas of the Common Elements (including doors and windows); removal of any materials from the Common Elements that might impair access to the Units or the Project; and making necessary or desirable alterations, additions, betterments, or improvements to or on the Common Elements. In general, the Association shall exercise its duties in a manner designed to maintain the value of the Project as a first class mixed-use real estate property comparable to other first class mixed-use properties of similar size and type in the County of Summit.

6.8 **MANAGING AGENT.** The Association may contract with a Managing Agent to manage the affairs of the Association, which Managing Agent may charge competitive fees for the services provided. Any contract with a Managing Agent shall provide for the right of the Association to terminate such contract without penalty or termination fee at any time upon not more than ninety days' notice.

6.9 **TRANSFER FEE.** After the initial sale of each Unit by Declarant, any subsequent sale or transfer of a Unit shall be subject to a Transfer Fee of \$300.00, which Transfer Fee shall be paid to the Association as a condition to closing the sale of the Unit. The purpose of the Transfer Fee is to compensate the Association for the various expenses associated with transfers of Units, including issuing statements of status, delivering copies of records, otherwise facilitating the transfer and repairing wear and tear resulting from moving in and out of a Unit. The Transfer Fee shall be deemed

an Assessment for purposes of this Declaration. The Association may increase or decrease the amount of the Transfer Fee from time to time.

6.10 BOOKS AND RECORDS. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners, Agencies and Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Association's Bylaws and as required by the Nonprofit Act and the Act. The Association shall maintain and make reasonably available for inspection and copying by Owners and First Mortgagees such books and records as may be required under the Act and as required by the Nonprofit Act. The Association may charge a fee for copying such materials in an amount equal to its actual costs incurred for such services. For purposes of this Section, reasonably available shall mean (a) available during normal business hours upon at least five business days' prior notice or (b) or at the next regularly scheduled meeting if such meeting occurs within thirty days after the request.

6.11 RULES. The Board may promulgate and enforce, including enforcement by levying and collecting charges or fines for the violation thereof, reasonable Rules governing the use of the Units, Parking Spaces, Storage Areas, Common Elements and any property owned or managed by the Association. All such Rules shall be consistent with, and shall not materially diminish, the rights and duties established in this Declaration and the reasonable enjoyment of the uses permitted hereunder, and in no event shall any such Rules change the uses to which any Unit is restricted under this Declaration. The Board may suspend an Owner's right to use any Parking Space upon thirty days' notice, as a consequence of such Owner's failure to pay when due such Owner's Assessments. During the Period of Declarant Control, Declarant will establish the initial Rules governing the Units.

ARTICLE 7 MEMBERSHIP AND VOTING RIGHTS

7.1 MEMBERSHIP IN THE ASSOCIATION. Each Owner of a Unit shall automatically be a member of the Association. Membership in the Association is appurtenant to and inseparable from each Unit and shall automatically pass with fee simple title to a Unit. Each Owner of a Unit shall automatically be entitled to the benefits and subject to the burdens relating to membership. If fee simple title to a Unit is held by more than one person or entity, then such persons or entities shall jointly appoint one person to exercise the rights and obligations of membership in the Association on behalf of such persons or entities, failing which such Owners shall not have the right to vote as a member nor to appoint directors to the Board.

7.2 VOTING AND APPROVAL RIGHTS. The Association shall have two classes of membership consisting of the Owners of Residential Units and Owners of Commercial Units. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote on matters affecting the Association in accordance with their respective Voting Interests described in Section 9.3 below. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

7.3 TRANSFER OF MEMBERSHIP. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of a Unit and then only to the purchaser or Mortgagee of such 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.

ARTICLE 8 EASEMENTS

8.1 **RECORDED EASEMENTS.** The Property shall be subject to all easements as shown or listed on the Condominium Map or any plat, those easements provided in the Act, and as otherwise set forth in this Article 8.

8.2 **DECLARANT'S EASEMENT RIGHTS.** Declarant, for itself, its contractors and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction 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. In addition, Declarant, for itself, its successors and assigns, further reserves an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising any Development Rights or Special Declarant Rights reserved under this Declaration. Such rights may be exercised by Declarant from time to time, and at different times until termination thereof pursuant to Section 17.5, 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.

8.3 **ENCROACHMENT EASEMENTS.** If there is an encroachment of Common Elements upon a Unit, or a Unit upon Common Elements or another Unit, a valid easement for the encroachment and maintenance thereof shall exist so long as such encroachment does not materially adversely interfere with the use or occupancy of any portion of the Project. Encroachments referred to herein include encroachments caused by (a) errors in the original construction of the Buildings housing the Units, (b) errors in the Condominium Map, (c) settling, rising or shifting of the earth and (d) changes in position caused by repair or reconstruction of all or any part of the Project. Notwithstanding the foregoing, nothing herein should be construed to relieve any Unit Owner, Declarant or any other Person from liability with respect to willful misconduct or intentional failure to adhere to the boundaries described on the Map resulting in encroachments on another Unit or upon Common Elements.

8.4 **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 for utility providers and for the installation, replacing, repairing and maintaining of all Utilities, except that, if not already in existence, such easement may not be utilized by the utility providers until a written easement agreement setting forth the specific location of the desired easement is executed by the Declarant or Association and such utility provider. The Board may condition the Association's approval on such matters as it deems appropriate, including location, design, alterations to existing structures and impact on the Common Elements and the Project, and the Board will not approve any utility easement request if the Board finds that such easement would interfere with the reasonable use and enjoyment of a Unit. Said blanket easement includes future utility services not presently available to the Units that may reasonably be required in the future. By virtue of this easement, after receiving approval of the Association, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment in any of the Units and to affix and maintain wires, circuits, conduits, pipes, cables, transceivers, fiber optics and ducts 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 Board as provided above. Upon exercise of the rights contained in this Section 8.3, 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. The foregoing blanket easement for Utilities shall be applicable to specific Utility easements shown on the Condominium Map.

8.5 SUPPORT EASEMENTS. Each Owner shall have a non-exclusive easement for horizontal, vertical and lateral support of such Owner's Unit, including a non-exclusive easement in and to all structural members, columns, beams, foundations, load bearing walls, and other structural components located in or constituting a part of the Common Elements or another Owner's Unit for the support of such Owner's Unit, and the support of any Common Elements surrounding, adjoining or located within such Owner's Unit.

8.6 ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.

8.6.1 A general non-exclusive easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property, including all Units and all Common Elements in the proper performance of their duties.

8.6.2 Some of the Common Elements are or may be located within a Unit. All Owners shall permit a right of entry to the Board, a Managing Agent, or any other person authorized by the Board or a Managing Agent, 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 Repair Work for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. In order to facilitate the aforesaid Repair Work, all Owners shall provide the authorized Managing Agent(s) keys to their respective Units.

8.6.3 Notwithstanding anything in Section 8.6.2 to the contrary, for Repair Work other than emergency Repair Work, entry shall be made only on a regular business day during regular business hours, after providing the Owner with at least one day's written notice. In an emergency, entry shall be made at any time, provided that a reasonable effort according to the circumstances is made to give advance notice of entry and to minimize the effect of any such entry on any Owner and such Owner's Permittees.

8.6.4 The Board or its Managing Agent is granted the authority to use such reasonable force as is necessary to gain entry into a Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as an Owner has provided the authorized Managing Agent with a key as set forth in Section 8.6.2 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.

8.6.5 All damage to the interior or any part of a Unit resulting from the Repair Work of any of the Common Elements at the instance of the Association shall be paid for as part of the General Assessment by all of the Owners benefited by the Repair Work. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort or lost profits arising from the Repair Work or other action taken to comply with any law, ordinance or order of any governmental authority.

Restoration of the damaged Improvements shall be to a condition substantially the same as the condition in which they existed prior to damage.

8.6.6 Notwithstanding the foregoing, if any such damage is the result of the failure of an Owner to provide the authorized Managing Agent with a key to its respective Unit and/or the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event an Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for said damages and charge such Owner responsible as a Default Assessment.

8.7 **OWNERS' EASEMENTS.** Subject to the provisions of this Declaration and the right of the Association to regulate the use of, and convey or encumber, the Common Elements as set forth herein, each Unit Owner and its Permittees shall have an easement:

8.7.1 in the General Common Elements for the purpose of ingress, egress and access to their Unit and to any Limited Common Elements allocated to such Units;

8.7.2 to use the General Common Elements in common with other Unit Owners;

8.7.3 to cross Commercial Common Elements for purposes of access, ingress and egress to and from the Owner's Unit, General Common Elements or public areas; and

8.7.4 to cross Residential Common Elements for purposes of access, ingress and egress to and from an Owner's Unit or Limited Common Elements.

8.8 **EASEMENTS DEEMED APPURTENANT.** The easements, uses, and rights created herein for any Owner shall be appurtenant to its Unit and all conveyances of and other instruments affecting title to a Unit shall be deemed to grant and be subject to the easements, uses, and rights provided for herein, even though no specific reference to such easements, uses and rights appears in any such instrument. Each Owner whose Unit is subject to an easement created by this Declaration may use the easement area for any purposes permitted in this Declaration not inconsistent with such easement and shall also have the right to temporarily interrupt the use of such easements as may be reasonably necessary to perform Repair Work to Common Elements or Units, provided that the temporary interruption does not materially interfere with the use and occupancy of another Owner's Unit or the Common Elements. Each Owner shall have the right to relocate any easement within its Unit at its own expense, so long as such Owner provides an adequate replacement easement that does not materially interfere with the use and occupancy of another Unit or the Common Elements.

8.9 **RESERVATION OF EASEMENTS, EXCEPTIONS AND EXCLUSIONS.** The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other non-exclusive easements, permits or licenses over the General Common Elements for the best interest of the Owners and the Association.

8.10 **ADDITIONAL EASEMENTS.** If at any time after the date hereof (a) additional emergency easements are required by law or by insurance underwriting requirements generally applicable to residential, commercial and/or mixed use projects, (b) any additional easements for access to or use of Utilities are reasonably necessary for the use and operation of any one or more Units, or (c) any additional easements are necessary or desirable to effectuate the purposes of this Declaration, each Owner shall, within a reasonable time after written request by any other Owner, grant such easement;

provided, however, that (x) no Owner granting any such easement is required to construct Improvements, expend any monies, or incur other material liabilities in order to provide such easement (other than costs paid solely by the Owner(s) for whose benefit such easement is to be granted), (y) such easement will not materially increase expenses, or create any material additional expenses, for any portion of the Project (unless allocated to and paid by the Owner(s) for whose benefit such easement is to be granted or unless required by law), and (z) the use of such easement will be non-exclusive and will not unreasonably interfere with the operation, use or enjoyment of such Owner's Unit or violate or interfere with the rights or interests of such Owner's Permittees. The Owners requesting any such easement shall pay all costs and expenses in connection with the approval and granting of any such easement, including all engineering fees, recording charges and legal fees and expenses reasonably incurred by the Owners or any of them in connection therewith. If new easements are created, this Declaration and the Condominium Map shall be amended, if necessary, by Declarant or the Association, as the case may be, and such easements shall have the same force, effect and priority as if such easements were originally contained herein.

ARTICLE 9 ASSESSMENTS

9.1 **ASSESSMENTS.** All Owners, including Declarant while it is an Owner of any Unit, shall be obligated to pay (a) General Assessments, (b) Special Assessments, and (c) Default Assessments imposed by the Association. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner(s) at the time the Assessment became due. No Owner may exempt itself from liability for the Assessment by abandonment of its Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments shall be payable in accordance with the levy thereof, and no offsets or deductions thereof shall be permitted for any reason including any claim that the Association or the Board is not properly exercising its duties and powers under the Association Documents.

9.2 **ALLOCATION OF COMMON EXPENSES.** Except as otherwise expressly provided in this Declaration, all assessments for Common Expenses shall be allocated among the Units in accordance with the Expense Sharing Ratios set forth for each Unit in **Exhibits C-1** through **C-3** or as provided in Section 9.2.10 below. Such assessments will be determined by multiplying the total amount of each separate category of Common Expenses by the respective Expense Sharing Ratio for each Unit.

9.2.1 *General Common Expenses.* For purposes of this Declaration, "**General Common Expenses**" shall mean all Common Expenses other than Limited Common Expenses. Examples of anticipated General Common Expenses include taxes and special assessments against the General Common Elements, if any, premiums for insurance (but excluding any separate or additional premiums attributable to one or more but not all of the Units), Utility charges for the General Common Elements or charges not otherwise chargeable to a particular Unit Owner or group of Unit Owners, expenses for maintenance and repairs to sidewalks and alleys adjacent to the Property, expenses for maintenance, repairs and renovations not otherwise chargeable to a particular Unit Owner or group of Unit Owners, wages, legal and accounting fees (not otherwise chargeable to a particular Unit Owner or group of Unit Owners), management fees capital expenditures, expenses and liabilities incurred by the Association or its Managing Agent on behalf of the Unit Owners under or by reason of the Association Documents not otherwise chargeable to a particular Unit Owner or group of Unit Owners,

any deficit from a previous period not otherwise attributable to a particular Unit Owner or group of Unit Owners, creation of a capital improvement reserve and a reasonable contingency reserve for the General Common Elements and all other costs and expenses related to the General Common Elements. Base Rent under the Land Lease is also a General Common Expense, but will be specially allocated as follows: 33% to the Commercial Units and 67% to Units located on the second floor of the Buildings. Unit R107 shall not have any obligation to pay a portion of Base Rent under the Land Lease.

9.2.2 *General Expense Sharing Ratio.* This figure shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to a Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Residential and Commercial Units in the Project (determined pursuant to Section 9.3.1 below). The General Expense Sharing Ratios will be set forth in **Exhibit C-1**, as may be amended pursuant hereto.

9.2.3 *Commercial Expenses.* For purposes of this Declaration, the term “**Commercial Expenses**” shall mean all expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, insurance covering Commercial Common Elements, utilities serving Commercial Units and other items concerning the Commercial Common Elements and Commercial Units. The cost of preparing a separate accounting of Commercial Expenses shall also be included as a Commercial Expense.

9.2.4 *Commercial Expense Sharing Ratio.* As to each Commercial Unit, this figure shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to such Commercial Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Commercial Units in the Project (determined pursuant to Section 9.3.1 below). The Commercial Expense Sharing Ratios will be set forth in **Exhibit C-2**, as may be amended pursuant hereto.

9.2.5 *Residential Expenses.* For purposes of this Declaration, the term “**Residential Expenses**” shall mean all expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, insurance covering Residential Common Elements, utilities serving Residential Units and other items concerning the Residential Common Elements and Residential Units. The cost of preparing a separate accounting of Residential Expenses shall also be included as a Residential Expense.

9.2.6 *Residential Expense Sharing Ratio.* As to each Residential Unit, this figure shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to such Residential Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Residential Units in the Project (determined pursuant to Section 9.3.1 below). The Residential Expense Sharing Ratios will be set forth in **Exhibit C-3**, as may be amended pursuant hereto.

9.2.7 *Parking Expenses.* For purposes of this Declaration, the term “**Parking Expenses**” shall mean all expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, insurance covering the Parking Spaces, utilities and other items concerning the Parking Spaces. The cost of preparing a separate accounting of Parking Expenses shall also be included as a Parking Expense.

9.2.8 *Parking Expense Sharing Ratio.* As to each Unit Owner, this figure shall be the percentage equivalent to a fraction, (i) the numerator of which shall be the number of Parking Spaces allocated as Limited Common Elements to such Owner, and (ii) the denominator of which shall be the sum of the total number of Parking Spaces. The Parking Expense Sharing Ratios will be amended upon allocation and reallocation of Parking Spaces.

9.2.9 *Limited Common Expenses.* For purposes of this Declaration, the term “**Limited Common Expenses**” shall mean all expenses related to the operation, management, maintenance, repair, replacement, reasonable reserves, insurance, Utilities and other expenses and expenditures associated with a Limited Common Element the use or benefit of which is allocated to less than all of the Units, as reflected either in this Declaration or on the Condominium Map, as each may be amended pursuant hereto, and which expense is not otherwise allocated pursuant to this Article 9. Additional Rent under the Land Lease shall also be treated as a Limited Common Expense allocated to the Commercial Units.

9.2.10 *Limited Expense Sharing Ratios.* As to a Unit to which a Limited Common Expense is to be allocated, this figure shall be the percentage equivalent to a fraction, the numerator of which shall be the number of votes allocated to that Unit (determined pursuant to Section 9.3.1 below), and the denominator of which shall be the total number of votes allocated to all Units (determined pursuant to Section 9.3.1 below) to which the particular Limited Common Expense is to be allocated.

9.2.11 *Disputes Concerning Common Expenses.* Any dispute among the Board concerning the constituent categories (but not specific dollar amounts) of General Common or Limited Common Expenses shall be resolved through binding arbitration in accordance with the provisions of Section 24.12 of this Declaration.

9.2.12 *Changes in Expense Sharing Ratios and Voting Interests.* After the initial recording of this Declaration, **Exhibits C-1** and **C-2** shall be amended by Declarant or the Association following the combination or subdivision of any Commercial Unit in accordance with Article 4 to reflect any modifications to Gross Floor Area of Units that occurred as a result of such combination or subdivision. Following the combination or subdivision of any Commercial Unit in accordance with Article 4 or Section 17.1, in the event that the Gross Floor Area within any Commercial Unit shall change and provided such addition or removal is otherwise permitted under the terms of this Declaration, the Voting Interests and Expense Sharing Ratios shall be recalculated in accordance with the applicable formulas set forth in the applicable subsections, by adjusting the numerator and denominator to reflect the applicable changes in Gross Floor Area and Voting Interests. The revised percentages of Expense Sharing Ratios and Voting Interests shall be effective upon the following:

(a) in the case of an increase in Gross Floor Area, the permanent Improvements are substantially complete (as certified in writing to the Association by a licensed and reputable independent architect or licensed surveyor, who may be the applicable Project architect), or

(b) in the case of a decrease in Gross Floor Area, the date on which all of the following have occurred: (i) the demolition and removal of Improvements containing Gross Floor Area shall have been substantially completed, and (ii) the applicable Unit Owner shall have certified in writing to the Association that such removal is intended to be permanent.

In either case, the Owner whose Gross Floor Area is being increased or decreased shall provide to the Association, no later than the date of substantial completion as aforesaid, a certification from a licensed

and reputable independent architect or licensed surveyor stating the amount of increase or decrease in Gross Floor Area, within three (3) days of taking title or recording an amendment to the Map, evidence of the date of recording. In the event of any dispute between the submitting Owner and the Association regarding the change in Gross Floor Area, Voting Interests, or the Expense Sharing Ratios, such dispute shall be resolved by arbitration pursuant to Section 24.12 hereof. Upon any such increase or decrease becoming effective, the Owners' Voting Interests and their respective shares of Assessments (to the extent based on Expense Sharing Ratios) shall change accordingly, without any further action by any person. In the event of any such increase or decrease, Declarant or the Association (as attorney-in-fact for the Owners pursuant to Section 14.1 below) shall execute and record an instrument amending the schedules of Expense Sharing Ratios and Voting Interests attached hereto as **Exhibits C-1** and **C-2**. The absence of any such amendment shall not limit the application of the foregoing provisions as among the Owners or as between the Owners and the Association, but persons other than the Owners and the Association shall not be bound by any such change in the Voting Interests or Expense Sharing Ratios (nor by the resulting change in share of Assessments) unless such an amendment shall have been recorded.

9.3 DETERMINATION OF VOTING INTERESTS. The Voting Interest of each Unit Owner under this Declaration will be determined and governed by the provisions of this Section 9.3 as set forth below.

9.3.1 General Voting Interests. With respect to all matters on which Unit Owners are entitled or may be requested to vote or approve (and not otherwise governed by the topic or Unit specific provisions of this Section 9.3), each Unit Owner shall be entitled to one vote for each 100 square feet of Gross Floor Area included within a Unit, except that increments of less than 50 square feet of a Unit shall be rounded down to the closest full vote, and increments equal to or greater than 50 square feet of a Unit shall be rounded up to the closest full vote. For example, a Unit having 1,149 square feet shall be entitled to eleven votes and a Unit having 1,151 square feet shall be entitled to twelve votes. The Gross Floor Area of each Unit shall be as reasonably determined by the Declarant. The Voting Interests will be set forth on **Exhibit C-1**, as may be amended pursuant hereto. Owners of Parking Space Units who do not own any other type of Unit will not be entitled to vote on any issues other than the parking issues described below.

(a) Decisions on various matters shall be made on a reasonable and equitable basis with respect to each Class of Units. Owners of Commercial Units shall have the right to veto a majority vote with respect to project issues if: (i) the decision made will have a disproportionately material and adverse impact on Commercial Units, as compared to Residential Units, or (b) the decision made materially modifies or changes the rights and benefits of Commercial Units as initially established by the Declaration. In addition, Owners of Commercial Units shall have the right to cause Repair Work or other improvements to be made to General Common Elements despite a negative vote on same by the majority if the Owners of Commercial Units bear all of the expense thereof in excess of what the majority approves, which expenses shall be allocated as Commercial Expenses.

9.3.2 Reserved Power of Owners or Owner Groups. Owners of specified Units have the right to require the Board (as provided in Section 6.4) to submit to a vote of groups of Owners certain subjects as set forth in this Section 9.3.2.

(a) *Project Issues.* With respect to all general issues on which a vote may be requested by the Board, may be required as provided in Section 6.4, or may otherwise be required by this Declaration, all Owners of Units shall be entitled to vote and each Owner of a Unit shall be entitled

to vote its Voting Interest. Project issues include matters of general concern for the Community, rules for operation and use and maintenance of the General Common Elements, the determination of General Common Expenses and approval of the portion of the Budget related to General Common Expenses, other than as contained in this Declaration, and all other matters related to the Community not involving issues described in Sections 9.3.2(b) through 9.3.2(d) below.

(b) *Commercial Issues.* With respect to all commercial issues on which a vote may be requested by the Board, may be required as provided in Section 6.4, or may otherwise be required by this Declaration, only Owners of Commercial Units shall be entitled to vote and each Owner of a Commercial Unit shall be entitled to vote its Voting Interest. Commercial issues include rules for operation and use of the Commercial Units other than as contained in this Declaration, and with respect to Commercial Common Elements the timing, nature and scope of Repair Work, the nature and extent of any improvements or alterations, limitations on use not inconsistent with this Declaration, events and group activities that may be held, and other matters regarding the use, operation, and care of the Commercial Common Elements only.

(c) *Residential Issues.* With respect to all residential issues on which a vote may be requested by the Board, may be required as provided in Section 6.4, or may otherwise be required by this Declaration, only Owners of Residential Units shall be entitled to vote and each Owner of a Residential Unit shall be entitled to vote its Voting Interest. Residential issues include rules for operation and use of the Residential Common Elements other than as contained in this Declaration, and the timing, nature and scope of Repair Work, the nature and extent of any improvements or alterations, limitations on use not inconsistent with this Declaration, events and group activities that may be held, and other matters regarding the use, operation, and care of the Residential Common Elements only.

(d) *Limited Common Expense Issues.* With respect to all Limited Common Expense issues on which a vote may be requested by the Board, may be required as provided in Section 6.4, or may otherwise be required by this Declaration, each Owner shall be entitled to vote in accordance with its respective applicable Limited Expense Sharing Ratio as determined under Section 9.2.10.

(e) *Parking Issues.* With respect to all issues relating only to Parking Spaces on which a vote may be requested by the Board, may be required as provided in Section 6.5, or may otherwise required by this Declaration, each Owner shall be entitled to vote in accordance with its respective Parking Expense Sharing Ratio as determined under Section 9.2.10. Parking issues include those involving portions of the Association's Budget related to assessments for Parking Expenses, if any, allocation of Parking Expenses, and specific matters dealing solely with the use of and access to the Parking Spaces and accompanying rules and regulations.

9.3.3 *No Vote if Not in Good Standing.* No Owner shall be entitled to vote on any matter who is not in Good Standing with the Association, and the Voting Interest of such Owner not in Good Standing shall be excluded from the calculation of the percentage required for approval of the vote or matter in question (both as to numerator and denominator). All Owners in Good Standing shall be entitled to vote in accordance with the provisions of Section 7.1 herein.

9.4 **BUDGET.** The Board, on behalf of the Association, shall cause to be prepared and adopt a proposed Budget for each fiscal year based on estimated General Common Expenses and Limited Common Expenses (including Commercial, Residential and Parking Expenses). The Budget shall show, among other things, the categories of expenses, the amount of General Common Expenses and

Limited Common Expenses (including Commercial, Residential and Parking Expenses), any capital expenditures, any expected income of the Association for the coming fiscal year, any expected surplus or deficit from the prior year, and any existing surplus held by the Association. The Budget may include amounts for contingencies and amounts deemed necessary or desirable to create, replenish, or add to Association funds and reserves for capital expenditures related to the Common Elements and such other Association expenditures permitted hereunder. The Board shall submit the Budget to the Owners for ratification pursuant to Section 303(4) of the Act. Accordingly, the Budget will be deemed approved by Owners in absence of a veto by a majority of all Owners.

9.5 GENERAL ASSESSMENTS. An Owner's General Assessment shall be determined based on the adopted and ratified Budget. The Board shall levy and assess the General Assessments to each Owner in accordance with the Expense Sharing Ratios in effect on the date of the General Assessment; provided, however, that the Board may allocate those expenses relating to fewer than all of the Units to the Owners of those affected Units only. General Assessments shall be payable in advance monthly, and shall be due on the first day of each month in regular installments on a prorated basis, and shall be considered in default if not paid within thirty days of the due date. If the Association omits or fails to set the amount of the General Assessments for any assessment year, Owners shall be obligated to continue making periodic payments to the Association for General Assessments in the same amount and on the same schedule as last fixed by the Association. General Assessments shall provide for the payment of all estimated Common Expenses growing out of or connected to Repair Work, operation, utilities, additions, alterations, and improvement of and to all Common Elements; expenses and fees of management; insurance premiums for insurance as provided in Article 10 hereof; charges for trash removal; legal and accounting fees; expenses and liabilities incurred by the Association performing its duties under this Declaration; and the creation and maintenance of contingency and reserve funds for Repair Work relating to the Common Elements.

9.5.1 Reserve Fund. The Association shall maintain an adequate reserve fund for the Repair Work to be performed on the Common Elements, which reserve shall be funded by General Assessments based on the Expense Sharing Ratios. If deemed appropriate by the Board, the Association may also maintain an adequate reserve fund for the Repair Work to be performed on the Limited Common Elements, which reserve shall be funded by the applicable Unit Owner that benefits from such Limited Common Element(s).

9.6 DATE OF COMMENCEMENT OF GENERAL ASSESSMENTS. The General Assessments shall commence as to each Unit on the first day of the month following the effective date of adoption and ratification of the first Budget, but in any event, no later than 120 days following the conveyance of the first Unit. Until commencement of the General Assessments, the Declarant shall pay all Common Expenses of the Association.

9.7 SPECIAL ASSESSMENTS. In addition to the General Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction (excluding costs of initial completion, which shall be paid by Declarant) or reconstruction, unexpected repair or replacement of Improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 9.7 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section 9.7 shall be assessed to Owners according to their Expense Sharing Ratios for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units,

any extraordinary maintenance, repair or restoration expense. 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 days after such notice shall have been given.

9.8 DEFAULT ASSESSMENTS. All monetary fines and other enforcement costs assessed against an Owner pursuant to Association Documents, or any expense of the Association that is the obligation of an Owner or is incurred by the Association on behalf of an Owner pursuant to the Association Documents and not paid when due, including attorneys' fees incurred by the Association, shall be a Default Assessment and after the due date for payment thereof shall become a personal obligation of such Owner and a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in this Declaration or under Colorado law. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Default Assessment at least five days prior to the due date.

9.9 LIMITED COMMON EXPENSES. The Association may include in any type of Assessment the amount of any Limited Common Expense authorized by this Declaration for which the assessed Owner is liable. If any Owner fails to pay its share of Land Lease expenses or otherwise fails to comply with any covenant in the Land Lease which, if violated, could result in termination of the Land Lease, the Association shall make such payments and take such actions as are necessary to avoid termination of the Land Lease, and any expenses incurred in such event shall be assessed and enforced against the defaulting Owner as a Default Assessment. In the event the Association is unable to make a payment under the Land Lease as a result of an Owner's failure to pay its share of Land Lease expenses, the Association shall promptly pursue all of its rights set forth in Section 9.12 below, including foreclosure of its lien against the defaulting Owner's Unit.

9.10 ASSESSMENTS/CHARGES FOR SERVICES TO LESS THAN ALL UNITS IN COMMUNITY. The Association may, at any time from time to time, provide services to less than all of the Units in the Community. If such services are not funded by General Assessments or Special Assessments, then such services shall be provided, if at all, pursuant to a writing that includes a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services that may be provided by the Association pursuant to this Section include (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions; (c) the enforcement of the provisions of any declaration, covenants or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for Owners.

9.11 EFFECT OF NONPAYMENT: ASSESSMENT LIEN. Any Assessment installment, whether pertaining to any General, Special or Default Assessment, that 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:

9.11.1 If the delinquency continues for a period of fifteen days, assess a late charge for each delinquency in such amount as the Association deems appropriate (not to exceed five percent (5%) of the delinquent amount);

9.11.2 If the delinquency continues for a period of thirty days, assess an interest charge, in arrears, from the due date at the yearly rate of eighteen percent (18%) per year;

9.11.3 Suspend the voting rights of the Owner during any period of delinquency;

9.11.4 Accelerate all remaining installments of the delinquent Assessment so that unpaid Assessments for the remainder of the fiscal year shall be due and payable immediately;

9.11.5 Bring an action at law against any Owner or former Owner personally obligated to pay the delinquent Assessments;

9.11.6 Proceed with foreclosure as set forth in more detail below; and

9.11.7 Suspend any of the Owner's membership privileges in the Association.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Section 316 of the Act. Such lien will be superior to all other liens, except (1) the liens of all taxes, bonds, assessments and other levies that by law are superior and (2) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, an Association's lien for delinquent Assessments will be prior to all Mortgages to the extent of an amount equal to the Assessments that would have come due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce 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 or other exemption now or hereafter provided by the laws of the State of Colorado or 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.

9.12 PAYMENT BY MORTGAGEE. Any Mortgagee of any 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 such Mortgagee's Mortgage.

9.13 FAILURE TO LEVY ASSESSMENT. The failure to levy any Assessment or deliver a statement for any period shall not be deemed a waiver, modification, or a release of any Unit Owner from its obligation to pay, and such Owner shall be obligated to continue making periodic payments to the Association for such Assessment in the same amount and on the same schedule as last fixed by the Association.

9.14 STATEMENT OF STATUS OF ASSESSMENT PAYMENT. The Association shall furnish to any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, upon written request to the Association or its registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of the unpaid Assessments currently levied against such Unit, if any. The statement shall be furnished after written request within such times as required by law, and is

binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

9.15 CAPITALIZATION OF THE ASSOCIATION. The Association shall require the first Owner of any Unit (other than Declarant or a Successor Declarant) who purchases that Unit from Declarant or a Successor Declarant to make a nonrefundable contribution to the Association in the amount equal to one-fourth (1/4) of the total General Assessment allocated to such Unit at the time of sale (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Successor Declarant of each Unit as aforesaid, and may be used for the benefit of the Association as the Board deems appropriate, including to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contribution of working capital shall not relieve an Owner from making regular payments of Assessments as the same become due. The Association may, from time to time, increase the amount of the working capital contribution from the Owners of the Units (whether the initial purchaser of a Unit or not) to an amount equal to one-fourth (1/4) of the then current total General Assessments. Declarant shall not use working capital to defray any of its expenses, reserve contributions or construction costs to make up any budget deficits while Declarant is in control of the Association.

9.16 MAINTENANCE ACCOUNTS: ACCOUNTING. If the Association delegates powers of its Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Managing Agent, then such other persons or Managing Agent 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 Managing Agent, (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 month an accounting for the previous month. 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 in compliance with the Act) and annual tax returns prepared by a certified public accountant or as otherwise required by the Act.

9.17 SEPARATE UNITS. 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 Project (including the Leasehold interest in the Property) 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. In the event the taxes or assessments for any year are not separately assessed to each Owner but rather are assessed on the Project as a whole, then each Owner shall pay its proportionate share thereof in accordance with such Owner's applicable General Expense Sharing Ratio, and in such event, such taxes or assessments shall be a General Common Expense. The Association shall collect from each Owner its proportionate share of taxes and assessments for any year in which taxes are assessed on the Project as a whole.

ARTICLE 10 INSURANCE

10.1 GENERAL INSURANCE PROVISIONS. The Association shall acquire and pay for, out of the Assessments levied under Article 9 above, the Association insurance policies described in this Article 10 with reputable insurance companies authorized to do business in Colorado.

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 by the Association under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty days' prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the documents of the Association. Each Owner shall provide the Association with certificates evidencing the insurance required under Sections 10.8 and 10.9 below. All policies required to be carried by Owners under Sections 10.8 and 10.9 below shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty days' prior written notice to the Association and First Mortgagee. If any insurance coverage described in this Article 10 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees. Insurance policies required to be carried under this Article 10 shall provide for waiver of by the insurer of any rights of subrogation against the Association, the Managing Agent and any insured.

10.3 INSURANCE PROCEEDS. The insurance proceeds for any loss covered by insurance policies described in Article 10 shall be payable to a trustee designated for that purpose, or otherwise to the Association and not to any Owner or 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 common interest community created by this Declaration is terminated.

10.4 REPAIR AND REPLACEMENT OF COMMON ELEMENTS. Any portion of the Common Elements for which insurance is required under this Article 10 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 accordance with Section 20.2 below;

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 an affirmative vote not to rebuild by (a) 67 Percent of the Owners and First Mortgagees, (b) every Owner of a Unit (or a Limited Common Element allocated to a Unit) that will not be rebuilt, and (c) every Owner of a Unit that depends for structural support on the damaged or destroyed Common Element; 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.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a General Common Expense, a Limited Common Expense, or a combination of the

foregoing, based on the type of Common Element damaged, as determined by the Board. If all of the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees in proportion to the Owners' Expense Sharing Ratios.

10.5 HAZARD INSURANCE COVERAGE FOR THE COMMON ELEMENTS. The Association will procure and maintain at its expense (which shall be a Common Expense) insurance for all risks of physical damage, including extended coverage, boiler and machinery, fire, vandalism, terrorism, malicious mischief, earthquake, demolition and replacement cost, sprinkler leakage, agreed amount (if the policy includes co-insurance), special condominium, building ordinance (including modern code compliance) and inflation guard endorsements attached (collectively, "**Hazard Insurance**"), in amounts not less than the full then current insurable replacement cost of the improvements of the Property, including the Common Elements and *including* all fixtures, interior and exterior walls and floors, partitions, decorated and finished surfaces of interior and exterior walls, floors, and ceilings, doors, windows, and other elements or materials that comprise a part of the Units and any fixtures, equipment or other property within the Units as originally installed and sold by Declarant to an Owner and that are to be financed by a Mortgage to be purchased by an Agency, *but excluding* any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant) and any furniture, personal property and other contents located within the Units, and *excluding* land, foundation, excavation and other matters normally excluded from coverage. The insurable replacement cost of the Common Elements will be based on the most recent appraisal provided by a qualified appraiser as updated from time to time in accordance with policy requirements. Maximum deductible amounts for such policies shall be determined by the Board; provided, however, that if an Agency or First Mortgagee requires specific deductibles, the Board shall follow such Agency's or First Mortgagee's requirements (with the incremental insurance cost incurred to be specifically allocated by the Association as a Limited Common Expense of the Unit securing the requiring Agency's or First Mortgagee's Mortgage). Payment of the deductible or payment of any loss falling within the deductible portion of a policy will be made by the Association. Funds to cover the deductible amounts or any losses within the deductible portion of a policy will be Common Expenses allocated among Unit Owners in accordance with their Expense Sharing Ratios. The Hazard Insurance will name each Unit Owner as an additional insured.

10.6 COMMERCIAL LIABILITY FOR THE ASSOCIATION. The Association will procure and maintain at its expense (which shall be a Common Expense) commercial general public liability and property damage insurance (including sprinkler leakage liability) for the Project ("**Liability Insurance**") in such amounts as the Board deems desirable, provided that such coverage shall be for a minimum of \$1,000,000 for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such policies shall insure the Association and the Board, the Managing Agent(s) and their respective agents and employees, and the Unit Owners and their Permittees 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 common interest ownership communities similar to the Project in the Summit County area. The Board shall not enter into independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Board that such party has current and satisfactory insurance, including worker's compensation insurance, commercial general liability and automobile insurance, all of which name the Association and its Members as additional insureds. If

the Association shall enter into an employer-employee relationship with any individual, the Association shall procure the insurance coverage set forth in the immediately preceding sentence. The Liability Insurance shall not cover individual operations of Units, which shall be separately obtained by the Unit Owners in accordance with Section 10.9 below.

10.7 ASSOCIATION INSURANCE REQUIREMENTS. The insurance policy required by Section 10.6 above may be carried in blanket policy form naming the Association as the insured, for the use and benefit of the Unit Owners, the members of the Board and their respective agents. Each Unit Owner shall be named as an additional insured person under such policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association. The insurance company shall waive its rights of subrogation under the insurance policy against any insured. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, and no act or omission of any other insured, 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 in Section 10.6 above, there is other insurance in the name of the Unit Owner covering the same risk covered by the policy of the Association, the Association's policy shall provide primary insurance.

Notwithstanding anything contained herein to the contrary, all insurance carriers selected by the Association under Sections 10.5 and 10.6 shall conform to the minimum financial rating, asset size, and other reasonable requirements imposed by Agencies and First Mortgagees; provided, however, that in no event shall any insurance required hereunder be maintained with an insurer having a rating by Best Insurance Reports that is lower than "A-/XIII" (or if such rating is no longer published or is modified, then such rating or qualifications as shall be equivalent to the aforesaid rating as determined as of the date of this Declaration), without the approval of all First Mortgagees.

10.8 OWNERS' HAZARD INSURANCE. Each Owner of a Unit shall obtain and maintain Hazard Insurance coverage (currently provided though an HO-6 policy) on the finished interior surfaces of the walls, floors, and ceilings, furniture, wall trimmings, improvements, equipment, fixtures, additional or other personal property supplied or installed by such Owner within its Unit in a minimum amount equal to the greater of (a) the replacement value thereof, or (b) such greater amount as may be required by any First Mortgagee.

10.9 OWNERS' LIABILITY INSURANCE. Each Owner of a Unit shall obtain and maintain Liability Insurance coverage in such amounts as the Board deems desirable, provided that such coverage shall be for a minimum of \$300,000 for Residential Units and \$1,000,000 for Commercial Units for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such liability policies shall insure the Owner, its Permittees and their respective agents and employees from liability in connection with the operation, maintenance and use of the Unit and must include a "severability of interest" clause or specific endorsement. In addition, any liability policy obtained by a Unit Owner shall name the Association and the Managing Agent as additional insureds. The insurance company providing any Liability Insurance or Hazard Insurance obtained by a Unit Owner shall waive its rights of subrogation under the insurance policy against the Association and the Managing Agent. The Association and each Owner of a Unit, respectively, hereby waives its rights of recovery that the Association or Owner may have against the other or any other Owner arising out of any event or occurrence to the extent of the Liability Insurance or Hazard Insurance policy proceeds (plus deductible amounts) applicable to such event or occurrence.

10.10 OWNERS' FAILURE TO OBTAIN INSURANCE. In the event an Owner fails to obtain and maintain any insurance required under Section 10.8 or Section 10.9 above, and an uninsured loss occurs that would have otherwise been covered under the insurance required by this paragraph, the Association shall have the option, but no obligation, to repair, replace or restore the damaged property to its previous condition and such Owner shall be liable to the Association for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association. In addition, in the event an Owner fails within thirty days after notice from the Association to obtain and maintain any insurance required under Section 10.8 or Section 10.9 above, the Association may (but shall have no obligation to) obtain and pay for such insurance and charge such Owner responsible as a Default Assessment.

10.11 FIDELITY INSURANCE. Fidelity insurance or fidelity bonds 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 Managing Agents 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 amount of funds, including reserve funds, in the custody of the Association or its Managing Agent, 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 months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Managing Agent, such insurance or bonds must be obtained by or for the Managing Agent 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.

10.12 WORKER'S COMPENSATION INSURANCE. The Association shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

10.13 DIRECTORS AND OFFICERS LIABILITY INSURANCE. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of the Board, against any liability asserted against a member or former member of the Board or incurred by such person in his or her capacity of or arising out of his or her status as a member or former member of the Board, and against any liability asserted against any officer or former officer of the Association in connection with his or her service in that capacity.

10.14 OTHER INSURANCE. The Board may obtain any other type of insurance it considers appropriate in amounts it deems appropriate to insure the interests of the Association and the Owners, including umbrella or extended coverage insurance, building ordinance coverage or coverage requested by any Agency or First Mortgagee. The Board may also require each Unit Owner to obtain and maintain other insurance with respect to the Units in the amounts and forms as may now or hereafter be required by law or deemed to be in the best interest of the Association.

10.15 COMMON EXPENSES. Unless otherwise identified as a Limited Common Expense, premiums for insurance that the Association acquires under this Article 10 and other expenses connected with acquiring such insurance are General Common Expenses. Notwithstanding the foregoing, if some of the insurance (or certain levels of insurance) is attributable to or requested by some but not all of the Units (or First Mortgagees holding mortgages encumbering such Units), the Association may charge those specific Units for which the insurance coverage is attributable an amount

equal to the premium attributable to such insurance coverage. Likewise, if any activity, use, or practice conducted by occupants of some but not all of the Units causes insurance premiums to increase over a level that would be charged for ordinary residential, commercial and/or retail activities, uses or practices, the Association may charge those specific Units the amount of such increase.

ARTICLE 11 MAINTENANCE

11.1 MAINTENANCE BY OWNERS. Each Owner shall maintain and keep in good repair the interior of its Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners and Common Elements. All fixtures and equipment installed within the Unit commencing at a point where the Utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. Each Owner shall further maintain and conduct such Repair Work as reasonably required to any Limited Common Elements allocated solely to the Owner's Unit, other than those Limited Common Elements that the Association chooses to maintain for reasons of uniformity or structural considerations. Each Owner shall regularly inspect its Unit and any Limited Common Elements allocated solely to the Owner's Unit as required or recommended under the Owner Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. Without limiting the generality of the preceding sentence, the Association may, but shall not be obligated to, maintain exterior patios, roofs, decks, and other exterior portions of the Building, even if such portions are Limited Common Elements appurtenant to a single Unit, and all costs incurred by the Association in that regard shall be charged to the Owners of the Units to which such Limited Common Elements are attached. An Owner shall not otherwise perform any act or work that will affect the Common Elements, impair the structural soundness or integrity of the Common Elements or impair any easement. No damage to, or waste of, the Common Elements, or any part thereof, or any other Unit, shall be committed by any Owner or Owner's Permittees or shall occur as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Unit or constructed by or on behalf of such Owner in or upon any of the Common Elements. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from (a) any action or activities committed by it or its Permittees or (b) as a result of the construction, operation, use, repair, or replacement of Improvements within such Owner's Unit or constructed by or on behalf of such Owner in or upon any of the Common Elements that is in violation of this Section 11.1, including any Improvements constructed by an Owner in or upon the Common Elements.

11.2 OWNER'S FAILURE TO MAINTAIN OR REPAIR. In the event that an Owner fails to maintain or conduct Repair Work to its Unit as required by Section 11.1 above, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed 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, after notice to the Owner and with the approval of the Board (after a determination by the Board that the condition of such Unit negatively impacts the value or use of other Units within the Project) shall have the right to enter upon the Unit to perform such Repair Work as is reasonably required to restore the Unit to a condition of good order and repair, except that no advance approval shall be required in the event of an emergency. All costs incurred by the Association in connection with the Repair Work shall be reimbursed to the Association by the Owner of the Unit upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Default Assessment levied in accordance with Article 9 of this Declaration. In the event, with the written consent of the Board, a

Unit is not repaired, the Owner of the damaged or destroyed Unit will clean up the area of damage to the reasonable satisfaction of the Board.

11.3 MAINTENANCE BY ASSOCIATION. The Association shall be responsible for all Repair Work with respect to (a) the General Common Elements, and (b) Limited Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner as set forth in this Declaration or identified on the Condominium Map (except as set forth in Section 11.1 above or unless necessitated by damage caused by the negligence, misuse or tortious act of a Unit Owner or Owner's Permittees as set forth in Section 11.7 below). The Association shall regularly inspect the General Common Elements, and Limited Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner as required or recommended under the Project Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. In the event the Association does not maintain or repair the Common Elements, until the expiration of the Period of Declarant Control, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. In addition, the Association shall have the right to perform Repair Work on any Unit the Owner of which has failed to rebuild as required under this Declaration.

11.4 DECLARANT/CONTRACTOR INSPECTIONS. During the first three years following the formation of the Community, Contractor and Declarant may periodically perform a walk-through of the Project, including all Common Elements and all Units, to inspect the performance of the various building components utilized in and through the Project and in connection with the Contractor's warranty. The Association and all Owners shall provide reasonable access to the Common Elements, including, among other Improvements, the roof, the mechanical rooms, the parking areas, amenity areas, elevators, decks, and storage room(s), and Units. The Declarant or Association shall give advance notice to the Owners of the date(s) and time(s) for such inspections. The purpose of such inspections is to observe performance of the building components, to detect potential problems, and to notify the proper subcontractors, designers or manufacturers of any defects prior to the expiration of the Contractor's warranty period, as well as generally ascertaining that the building components are performing as designed.

11.5 ASSOCIATION'S MAINTENANCE AS COMMON EXPENSES. The cost of Repair Work by the Association (net of any insurance proceeds paid thereon) shall be a Common Expense, to be shared by Unit Owners according to their respective Expense Sharing Ratios for such Common Expense. Similarly, damage to the interior or any part of a Unit resulting from the Repair Work to any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall be a Common Expense shared by the Owners according to their respective Expense Sharing Ratios for such Common Expenses. Notwithstanding the foregoing, if such damage is caused by negligent or tortious acts of a Unit Owner or an Owner's Permittees, then such Unit Owner shall be responsible and liable for all of such damage and the cost of repairing and restoring the same, to the extent that Owner or Owner's Permittees' negligence, misuse or tortious acts caused such damage, which must be timely paid.

11.6 LIMITED COMMON ELEMENT DAMAGE. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence, misuse or tortious acts of an Owner or Owner's Permittees, the then Owners of the Units to which the Limited Common Element is attributable shall bear the expense to repair or rebuild the Limited Common Element to its previous condition based on relative Expense Sharing Ratios applicable to such Limited Common Element. An

Owner shall bear the cost of repairing or replacing such damage to the extent it was caused by such Owner's or Owner's Permittees' negligence, misuse or tortious acts.

11.7 OWNER'S NEGLIGENCE. Notwithstanding anything to the contrary contained in this Declaration, in the event any damage to, destruction of or the need for Repair Work to the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner or an Owner's Permittees, or as a result of any improvement constructed by an Owner in or upon the Common Elements or within such Owner's Unit (with a determination of negligence or willful act or omission, and the amount of the Owner's liability therefor, having been made by the Board after a hearing with notice to the Owner), then the expenses, costs and fees incurred by the Association for such Repair Work shall be the personal obligation of such Owner, and, if not repaid to the Association within ten days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a Default Assessment determined and levied against such Owner's Unit.

11.8 BOARD CONSENT REQUIRED. In performing Repair Work as required herein, no Owner shall make any addition or other alteration to any portion of the Common Elements (including General and Limited Common Elements), regardless of how minor, without the express written consent of the Board.

11.9 UTILITIES FOR UNITS. Except as provided below, each Owner shall contract directly with each provider of utility service providing service to or for benefit of the Owner's Unit except for water, sewer, trash (including recycling). The Association has contracted with a submetering company to monitor and bill for gas and electric charges. Each Owner shall be responsible for paying such charges directly to the submetering company, including an administrative fee for such services. For water, sewer and trash and in the event that any other utility service is not separately metered or is otherwise not separately provided to Units, and is, instead, obtained for the Unit(s) by the Association, the Association will allocate the costs of such service to the Unit(s) receiving the service based upon reasonable estimates of use, if reasonably feasible, pro rata based upon Expense Sharing Ratios or the number of Units involved or as otherwise may be reasonable and appropriate under the circumstances. In the event an Owner fails to pay to the Association any utility costs as allocated by the Association within ten (10) days from receipt of the billing therefor, such Owner shall be liable to the Association for the cost of the utilities as well as any late payment charges incurred by the Association as a result of the Owner's failure to pay the Association, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association and charge such Owner responsible as a Default Assessment.

ARTICLE 12 MECHANIC'S LIENS

12.1 NO LIABILITY. No labor or service performed or materials or products furnished and incorporated in a Unit shall be the basis for the filing of a lien against the Unit of any other Owner not expressly consenting to or requesting the work or against the Common Elements. 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, subcontractors, laborers, materialmen and other persons furnishing labor or materials to its Unit.

12.2 INDEMNIFICATION. To the fullest extent permitted by law, each Owner shall indemnify, defend and hold harmless each of the other Owners, Managing Agent and the Association

from and against all liability or loss, including reasonable attorneys' fees, arising from the claim of any lien against the Unit of any other Owner or against the Common Elements (whether or not such lien or order is valid or enforceable as such) for construction performed or for labor, materials, services, or equipment supplied in connection with Improvements, repair or maintenance to the indemnifying Owner's Unit. In the event that any contractor, subcontractor, materialman, laborer, or any other person or entity files a mechanics' or similar type of lien that burdens or encumbers any portion of the Common Elements (except that undivided interest allocable to the Owner's Unit), or any other Unit not wholly owned by the Owner of the Unit in which such labor, materials, services, or products are incorporated, the Owner of the Unit in which such work was incorporated shall within thirty days of the filing of such lien of record either have such lien removed or post a bond for the benefit of the Association and affected Owners in an amount not less than 150 % of the amount claimed by any such person or entity claiming such lien. Such bond shall be sufficient to satisfy the requirements of Colo. Rev. Stat. § 38-22-132 (or any successor provision) to remove the lien from the real property.

12.3 ASSOCIATION ACTION. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien shall attach to or be enforceable against an individual Unit or Units.

ARTICLE 13 RESTRICTIVE COVENANTS

13.1 COMPLIANCE WITH LAWS. Each Unit Owner shall comply with all applicable laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Project and the Town Covenant. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, the Town Covenant or any other imposed requirement of any governmental body having jurisdiction over the same.

13.2 COMPLIANCE WITH ASSOCIATION DOCUMENTS. Each Owner shall comply strictly with, and shall cause his or her Permittees to comply strictly with, all of the provisions of this Declaration, the Articles and the Bylaws, the Rules, the Policies, and the decisions and resolutions of the Association or the Architectural Committee adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Board in the name of the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

13.3 COMPLIANCE WITH DEED RESTRICTION. In addition to the restrictions on use and occupancy set forth above, the Deed Restricted Units are also subject to the Deed Restriction Agreement for the Occupancy and Transfer of Basecamp Residential Dwelling Units (the "**Deed Restriction**"). Enforcement and modification of the Deed Restriction is a matter between the Owners of Deed Restricted Units and the Town.

13.4 PROPERTY TO BE MAINTAINED. Each Unit Owner shall at all times maintain its Unit in a manner consistent with the standard of first class mixed-use real estate properties of comparable size in the Summit County area. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Units so

that same are visible from any neighboring Unit or street, except as necessary during any period of construction. No unsightliness or waste shall be permitted on or in any part of a Unit.

13.5 NO NUISANCES, OFFENSIVE, HAZARDOUS, OR ANNOYING ACTIVITIES. No nuisances or offensive activity shall be permitted on any part of the Project nor shall anything be done or placed on or in any part of the Project that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Project that is or might be unsafe or hazardous to any person or property. No sound shall be emitted on any part of the Project that is unreasonably loud or annoying. No odor shall be emitted on any part of the Project that is noxious or offensive to others. Without limiting the generality of the foregoing, no firearms shall be discharged within any part of the Project (including the Units) and no open fires shall be lighted or permitted within the Project. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property or commercially reasonable amounts of cleaning and maintenance products customarily used in a business permitted to be conducted within the Project under this Declaration and applicable laws, provided that such products and substances are stored, used, transported and disposed of strictly in accordance with all applicable environmental laws. In no event shall the items set forth herein be deemed to be a complete list of nuisance or offensive activities prohibited hereunder, and the Board shall have the right to pursue prompt termination of any other nuisance or otherwise offensive activity carried on by a Unit Owner in violation of the provisions hereof. As used herein, the term “nuisance” shall not include any activities of Declarant that are reasonably necessary to the development and construction of, and sales activities in, the Project.

13.6 UTILITY SYSTEMS. Each Unit’s Utility systems shall be operated and maintained efficiently and in a manner that does not place undue operating, maintenance, repair or replacement costs on the mechanical and utility systems of another Unit or the Common Elements.

13.7 RESIDENTIAL PURPOSES. Residential Units shall be used for residential purposes only, including uses that are customarily incident thereto and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use his or her Unit for a professional or home occupation so long as the business is clearly secondary to the residential use of such Unit, the applicable zoning permits such use, such use is lawful in nature, there is no external evidence thereof (by sight, sound, smell or otherwise), the business does not result in an undue volume of traffic or parking within the Community, as determined by the Board in its sole discretion from time to time, no unreasonable inconvenience to other residents of Units is created thereby, and the business conforms to any Rules that may be imposed by the Board from time to time on a uniform basis. In addition, notwithstanding the foregoing, any Managing Agent hired by the Association to manage the Project may also conduct such management activities from within a Residential Unit.

13.8 DECLARANT’S USE. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, contractors, assigns and representatives, to perform such reasonable activities, and to maintain upon portions of the Project such facilities as Declarant deems reasonably necessary, convenient or incidental to the completion and sale of the Units. Without limiting the generality of the foregoing, Declarant may maintain management offices, storage areas, signs, model units, sales offices, parking areas and lighting facilities. Declarant expressly reserves the right to locate any sales office, management office, or models within any Unit owned by Declarant and designated from time to time and the right to use Parking Spaces for such purposes. The rights retained by Declarant in this

Section 13.8 shall terminate upon conveyance by Declarant of all of the Units to Owners other than Declarant or ten years after the recording of this Declaration, whichever occurs first.

13.9 LEASING OF UNITS. Subject to the remaining provisions of this Section 13.9, an Owner shall have the right to lease its Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (a) 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 Association's Rules and Policies are provided to the lessee with the lease; (b) Residential Units may be leased only for the residential uses provided herein; (c) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision; and (d) any Owner who leases his or her Unit shall, within three days after the execution of such lease, forward a copy of the same to the Association. In order to assure Unit Owners of eligibility of the Project for any Agency financing, the Association may adopt Rules with respect to rental of Residential Units to non-Owners. The Deed Restricted Units are also subject to additional restrictions on leasing set forth in the Deed Restriction.

13.10 USE OF COMMON ELEMENTS. Each Owner and Owner's Permittees may use the Limited Common Elements allocated to the Owner's Unit and the General 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 Board may adopt Rules or Policies governing or restricting the use of the Common Elements. Each Owner and Owner's Permittees, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to its Unit, agrees to be bound by any such adopted Rules or Policies. No Owner or Owner's Permittees 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 Board or if appointed by the Board, the Architectural Committee. No maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer or boat may be performed or conducted on any Common Element. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

13.11 MIXED-USE NATURE OF COMMUNITY. Each Owner acknowledges and agrees that the Community is a mixed-use project and that traffic, noise, odors and commerce will exist at and within the Community for lawful commercial purposes. Such traffic, noise, odors and commerce will not, however, rise to the level of a common law nuisance. The Board shall have the right to regulate or prohibit any use that would create a common law nuisance or is prurient in nature.

13.12 ZONING RESTRICTIONS. No Unit shall be used for any purpose not permitted by the zoning ordinances of the Town, this Declaration, the Town Covenant or not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule.

13.13 PROHIBITION AGAINST TIMESHARING, HOUSE EXCHANGE AND RENTAL POOLS. No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan, nor shall a Unit be dedicated to an exchange program that provides for recurring occupancies by different persons for durations of less than one year. Rental pool and condominium hotel arrangements that allow an Owner to put his or her Unit into a rental pool for Declarant or the Association to rent out and collect income while an Owner is not living in the Unit are prohibited.

13.14 RESTRICTIONS CONCERNING VEHICLES.

13.14.1 *Abandoned or Stored Vehicles.* No abandoned or inoperable vehicle of any kind shall be stored or parked on any of the Common Elements. An “*abandoned or inoperable vehicle*” shall be defined as any vehicle that is not capable of being driven under its own propulsion or does not have current registration. Stored vehicles are also prohibited from being parked on the Project. For purposes hereof, a vehicle shall be considered “*stored*” if it remains on the Project without being driven for fourteen (14) consecutive days or longer without prior written Board permission. Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a “car” or “passenger vehicle” classification or the equivalent by the Colorado Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than sheriffs, marshals, police officers’ or other emergency vehicles marked as such, are also prohibited from being parked on the Project, except in areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the General Common Elements or the Parking Common Elements during normal business hours for the purpose of serving any Unit or Common Element; provided, however, that no such vehicle shall remain on the General Common Elements or the Parking Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

13.14.2 *Right to Tow Vehicles.* If any vehicle is parked on any portion of the Project in violation of this subsection 13.14.1 or in violation of the Rules, the Board, Managing Agent or other agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board, Managing Agent or other agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner’s Parking Space, is obstructing the flow of traffic, is parked in a Parking Space that has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the Board, Managing Agent or other agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subsection 13.14.2, neither the Association nor the Managing Agent nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

13.15 **RULES AND REGULATIONS.** In addition to the other restrictions set forth in this Article 13 and the Rules adopted by the Board from time to time, the Unit Owners shall also comply with the following rules and regulations:

13.15.1 *Household Pets.* Household pets (meaning cats, dogs, hamsters, songbirds, aquarium fish and similar animals commonly owned as pets) are permitted in the Units, provided that (i) no more than two dogs and/or cats (for a combined total of two per Unit) may be kept in a Unit,

except that a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds) may be kept in a Unit, (ii) each Owner of a household pet shall clean up after such pet and ensure that such pet does not damage or soil the Common Elements, (iii) pets shall not be permitted anywhere in the Community other than within Units and those Common Elements necessary to provide ingress and egress to and from Units (e.g., hallways and elevators); and (iv) the Association (or the Board) shall have the authority to promulgate reasonable regulations regarding the keeping of pets in a Unit, including regulations regarding the type/species and size of pets permissible, and procedures regarding resolution of nuisance claims by Owners regarding pets. Such regulations may supplement, but not supersede the provisions set forth in this Section 13.15.1. Notwithstanding the foregoing, tenants, sub-tenants, invitees and visitors of Owners are expressly prohibited from having household pets in the Units or anywhere within the Community. In addition, no fish tank more than thirty (30) gallons in size shall be installed, kept, or used in a Unit without the prior approval of the Board. An Owner of a Unit containing pets shall be responsible for all claims, damages, costs and expenses incurred by the Association (or any other Unit Owner) as a result of the pet(s) contained or residing in such Unit.

13.15.2 *Ownership of Units.* No person or entity other than Declarant, Declarant's lender or an affiliate of Declarant's lender for the Project may own more than 10% of the Residential Units.

13.15.3 *Damage to Property.* If, due to the act or neglect of an Owner or Owner's Permittees, loss or damage shall occur or be caused to any person or property other than such Owner's Unit, such Owner or Owner's Permittees shall be liable and responsible for the payment of same. 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.

13.15.4 *Signs.* Subject to compliance with any restrictions imposed by the Town or the County, the Commercial Units shall be permitted to erect signage, advertising posters, political placards, billboards, speakers, and lighting on the exterior facades of the Building that are associated with the uses of such Commercial Units. No other signs shall be placed or permitted within the Project except those as may be approved by the Board, permitted under the provisions of sign rules, regulations and restrictions adopted by the Board (including the Commercial Director) or as otherwise required to be permitted by applicable law.

13.15.5 *Rubbish, Trash, and Garbage.* All rubbish, trash, garbage or other refuse and recycling (collectively, "Trash") shall be kept in a fully enclosed area. Trash shall be regularly removed from the Unit and shall not be allowed to accumulate therein. Each Unit at all times shall be kept in a clean, sightly and wholesome condition. No Trash shall be placed on the Common Elements outside the Unit, temporarily or otherwise, and shall be moved to the Project trash facilities for collection or otherwise removed from the Project by an Owner or its Permittees. The Board may require any Owner to arrange for trash removal of excessive amounts of Trash.

13.15.6 *Satellite Dishes.* All satellite dishes, satellites 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 control of an Owner unless first approved by the Board in conformance with applicable local ordinances and federal law.

13.15.7 *Life Safety Systems.* Owners and Permittees shall not tamper with or disengage any portion of the life-safety systems that serve the Project, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

13.15.8 *American Flags, Service Flags and Political Signs.* American flags, service flags and political signs shall be permitted within the Community in accordance with the requirements of Section 106.5 of the Act.

13.15.9 *Window Coverings.* Residential Units may only have interior window coverings in compliance with Rules adopted by the Board or the Architectural Committee.

13.15.10 *Noise.* Alteration, penetration or attachment of fixtures to the interior walls or ceiling of a Unit could result in degradation of the designed noise attenuation between Units. Therefore, no alteration, penetration (such as recessed lights) or attachment of fixtures (other than standard picture wall hanging hooks or brackets) may be made to the interior surfaces of Unit walls or ceilings without the prior written approval of the Board.

13.15.11 *Hours of Operation.* Neither the Association nor the Board may adopt Rules, Policies or amendments to this Declaration regulating or restricting the hours of operation of the Commercial Units without the consent and approval of the Commercial Director and Owners holding sixty-seven percent (67%) or more of the Voting Interests of the Commercial Units.

13.16 **ADDITIONAL RESTRICTIONS.** In addition to the restrictions on use and occupancy set forth above, the Association shall have and may exercise the right to control Owners' use and occupancy of their respective Units and the Common Elements in any reasonable and lawful manner approved by the Board.

ARTICLE 14 DAMAGE OR DESTRUCTION

14.1 **ASSOCIATION AS ATTORNEY-IN-FACT.** For the purpose of providing for the Common Elements, 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 required to be maintained by the Association 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 such 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 this Article 14, and (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 15 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner that may be necessary to exercise the powers granted to the Association as attorney-in-fact.

14.2 **THE ROLE OF THE BOARD.** Except as provided in Section 10.4, in the event of damage to or destruction of all or part of any Improvement or other property located within the Common Elements and covered by insurance written in the name of the Association under Article 10, the Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the “*Association-Insured Property*”).

14.3 **ESTIMATE OF DAMAGES OR DESTRUCTION.** As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board or Managing Agent shall obtain an estimate or estimates that it deems reliable and complete for the costs of repair and reconstruction. “*Repair and Reconstruction*” as used in this Article 14 shall mean restoring the damaged or destroyed Improvements (excluding any that are not to be rebuilt pursuant to Section 10.4) to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board or the insurance trustee, if any, determines to be necessary.

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

14.5 **DAMAGE OR DESTRUCTION TO UNITS.** Subject to the availability and sufficiency of insurance proceeds for such purpose, and subject to the Association completing Repair Work to associated Common Elements, any portion of a Unit for which insurance is required to be carried hereunder and that is damaged or destroyed must be repaired or replaced promptly by the Owner or Owners of the damaged or destroyed Unit unless:

14.5.1 The common interest community created by this Declaration is terminated in accordance with Section 20.2 below;

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

14.5.3 There is an affirmative vote not to rebuild by (a) 67 Percent of the Owners and First Mortgagees, (b) every Owner of a Unit (or a Limited Common Element allocated to such Unit) that will not be rebuilt, and (c) every Owner of a Unit that depends for structural support on the damaged or destroyed Unit; or

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

14.6 **INSUFFICIENT INSURANCE PROCEEDS.** If the insurance proceeds are insufficient to repair and reconstruct the damaged or destroyed Improvements, the Owners may elect, by affirmative vote as provided in Section 14.5.3 above, to (a) terminate the Project as provided herein; (b) repair and reconstruct only so much of such damage or destruction of the damaged or destroyed Units or Common

Elements as the amount of insurance proceeds will permit; or (c) take such other action as such Owners may approve.

14.7 ASSOCIATION REMEDIES. In the event an Owner fails to rebuild all or any portion of the Project for which such Owner is responsible under the terms of this Declaration to its condition immediately prior to its damage, destruction or partial condemnation pursuant to the requirements of this Article 14 or Article 15, the Association shall have the following remedies (in addition to any other remedies available to the Association or the Owners at law or in equity): (a) rebuild the affected portion of the Project to its condition immediately prior to its damage; or (b) subject to prior written approval of the non-defaulting Owners and their First Mortgagees, rebuild only that portion of the Project within the defaulting Owner's Unit (and any allotted Common Elements) necessary or appropriate to permit the reconstruction, use, and operation of the other Owners' Units (including rebuilding the Utilities that are necessary or appropriate for the continued operation of the other Units). The Association shall not exercise its remedies unless an Owner has failed to provide the Association with adequate assurances that the Owner will commence rebuilding as required by this Section 14.7 within thirty days after notice from the Association.

ARTICLE 15 CONDEMNATION

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

15.2 PARTIAL CONDEMNATION; DISTRIBUTION OF AWARD: RECONSTRUCTION. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

15.2.1 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 Owners who hold at least sixty-seven percent (67%) of the Voting Interests, and Declarant during the Period of Declarant Control, 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 Board. If such Improvements are to be repaired or restored, the provisions in Article 10 above regarding the disbursement of funds in respect to casualty damage or destruction that is to be repaired shall apply.

15.2.2 If the taking does not involve any Improvements on the Common Elements, 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 augment its working capital reserves or to offset future expenses of the Association.

15.3 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 common interest community created by this Declaration shall terminate, provided that approval must first be obtained from 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 the Nonprofit Act upon liquidation of the Association.

15.4 **EFFECT ON LAND.** The foregoing provisions concerning condemnation shall have no effect upon Landlord as the owner of the Land or its rights to receive fair compensation for the portion of the Land taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof.

ARTICLE 16 PARKING

16.1 **PARKING SPACES.** The Parking Spaces have been or will be allocated as Limited Common Elements to the Owners of Residential Units as indicated on **Exhibit E** to this Declaration or as depicted on the Condominium Map. Notwithstanding anything in this Declaration to the contrary, a Parking Space that is allocated as a Limited Common Element may not be assigned or transferred apart from the transfer of the subject Residential Unit without the prior written consent of the Unit Owner and any First Mortgagee whose lien encumbers any portion of such Residential Unit. Any subsequent sale or conveyance of the Residential Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the assigned Parking Space and shall cause the exclusive right to use such assigned Parking Space to vest in the purchaser of the selling Owner's Unit. Parking Spaces may be reallocated among the Residential Units with the consent of the Association, the Owner, and First Mortgagee of each Residential Unit whose Parking Space assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act. In addition, for so long as Declarant owns a Unit primarily for the purpose of sale, Declarant may sell additional Parking Spaces (which Parking Spaces shall thereafter be Limited Common Elements appurtenant to the Residential Unit to which they have been sold) to one or more Owners and may adopt rules regulating the use of unassigned Parking Spaces.

Each Storage Area shall be a Limited Common Element allocated to such Unit and may not be assigned or transferred apart from that Unit. Any subsequent sale or conveyance of the Unit, after the initial sale by Declarant, shall terminate the selling Owner's right, title, and interest to the assigned Storage Area and shall cause the exclusive right to use such assigned Storage Area to vest in the purchaser of the selling Owner's Unit. Storage Areas may be reallocated among the Units with the consent of the Association, the Owner, and First Mortgagee of each Unit whose Storage Area assignment is being changed, provided that such reallocation otherwise conforms to the requirements of Section 208(2) of the Act.

As part of its Development Rights and other Special Declarant Rights, Declarant may also reallocate Parking Spaces among Residential Units owned by Declarant in any manner desired by Declarant, prior to the sale of such Residential Units to their initial Owners (other than Declarant or its First Mortgagee), and may amend this Declaration or the Condominium Map accordingly, all without the consent of the Association, the Board, any First Mortgagees, or any other person. Declarant's Development Rights and other Special Declarant Rights set forth in this Section 16.1 shall terminate on the first to occur of the twentieth anniversary of the date this Declaration is recorded or the date of conveyance of the last Unit by Declarant to the first purchaser thereof (other than Declarant or its First Mortgagee). At such time, any Parking Spaces that have not previously been allocated as Limited Common Elements by Declarant shall become General Common Elements to be operated and managed

by the Association. Notwithstanding the provisions of this Section 16.1, Declarant's right to reallocate Parking Spaces will not apply to Parking Spaces specifically identified in any executed purchase agreement for sale of a Residential Unit, without the prior consent of the contract purchaser.

16.2 USE OF PARKING SPACES. Parking Spaces may only be used for vehicular parking, bicycle parking and utility functions in accordance with applicable provisions of this Declaration and reasonable Rules (including remote entry, parking cards, stickers, other identification, fines and security measures) established from time to time by the Association. Declarant reserves the right to convert the use of Parking Spaces to storage or other reasonable use.

ARTICLE 17 RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

17.1 RESERVATION OF DEVELOPMENT RIGHTS. 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 Project: (a) to create Units and Common Elements (including General and Limited Common Elements), (b) to subdivide, resubdivide or combine Units, (c) to convert Units into Common Elements, and (d) to allocate and reallocate Parking Spaces and Storage Areas as Limited Common Elements appurtenant to specific Residential Units within the Community. Notwithstanding the foregoing, the maximum number of Units that may be created within the Community shall be thirty-seven (37). Neither the Association nor any Unit Owner may take any action or adopt any rule or restriction that will interfere with or diminish any Reserved Development or Special Declarant Right without the prior written consent of the Declarant.

17.2 RESERVED DEVELOPMENT RIGHTS OF EXPANSION. Declarant reserves the right for itself and any Successor Declarant, without consent of the Association or any Owner or First Mortgagee being required, at any time and from time to time to subject additional property to the provisions of this Declaration.

17.2.1 Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Supplemental Maps setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of other property owned by Declarant in whatever order of development Declarant, in its sole discretion, determines. All Improvements to be constructed on such other property shall be substantially completed prior to the recording of the Supplemental Declaration and Supplemental Map adding additional Units and the Improvements shall be consistent with the Units hereby submitted to this Declaration in structure, type and quality of construction. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

17.2.2 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" or "Units" shall mean the Units as shown on Condominium Map plus any additional Units added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. In addition, Declarant may add definitions as necessary and appropriate to continue the general concepts

contained in the Declaration with respect to the expansion Units. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

17.2.3 Declaration Operative on Other Property. Units added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) depicting such other property and Supplemental Declaration(s) with the Clerk and Recorder. In the event that a portion of such other property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of such other property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units that are added to this Declaration in accordance with these provisions relating to enlargement thereof. No rights or obligations of any character in such other property shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder annexing the Units constructed in such area to the Community.

17.2.4 Effect on Expansion. Notwithstanding any inclusion of additional Units under this Declaration each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or is the owner of a Unit constructed in other property owned by Declarant and included by a Supplemental Declaration and Map) shall remain fully liable with respect to its obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Elements, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

17.3 OTHER RESERVED RIGHTS. Declarant also reserves the right for itself and any Successor Declarant, without consent of any Owner or First Mortgagee being required, at any time and from time to time to: (a) complete Improvements indicated on the plats and Condominium Map, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units and within the Common Elements; (c) utilize Common Elements in connection with construction activities, provided that Declarant will not unreasonably restrict or prohibit access to or utilization of an Owner's Unit in connection with such construction activities, (d) merge or consolidate the Project with a common interest community of the same form of ownership, (e) appoint or remove any officer of the Association or any member of the Board during the Period of Declarant Control set forth in Section 2.60 above; (f) amend the Condominium Map to (i) ensure that the language and all particulars used on the Condominium Map and contained in this Declaration are consistent; (ii) establish, vacate and relocate utility easements and access easements, (iii) establish, vacate and relocate Parking Spaces and Storage Areas, provided that if a Parking Space or Storage Areas has previously been allocated as a Limited Common Element to a particular Unit, the consent of the Owner and any First Mortgagee holding a lien encumbering any portion of such Unit shall be required in connection with the vacation or relocation of such Parking Space or Storage Areas; (iv) establish certain Common Elements as Limited Common Elements in accordance with requirements set forth in the Act; (v) reflect the subdivision or combination of any Unit as provided under this Declaration; and (vi) as may be otherwise permitted by the Act; and (g) exercise any other Declarant rights or development rights provided for in this Declaration.

17.4 CHANGE IN EXPENSE SHARING RATIOS. In the event Declarant or a Successor Declarant exercises the right to convert, subdivide, resubdivide, or combine Units as set forth above, the Expense Sharing Ratios of the resulting Units after such conversion, subdivision or combination shall be adjusted according to the formulas set forth in Section 9.1 above.

17.5 TERMINATION OF RIGHTS. Except for such longer period as is specifically set forth and provided in this Declaration, the rights reserved to the Declarant for itself, its successors and assigns in this Declaration (including those rights set forth in this Article 17, Article 18 and Sections 4.7 through 4.9, 5.1, and 8.1) shall expire on the earlier to occur of: (a) the conveyance of the last Unit to an Owner who is not Declarant or a Successor Declarant; or (b) twenty years from the date of recording this Declaration with the Clerk and Recorder, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Board may impose on the subsequent exercise of the rights by Declarant. However, the rights reserved under Section 17.3(g)(ii) above shall continue until two years after the last Unit is conveyed to an Owner other than Declarant or a Successor Declarant. Further, Declarant reserves the right, at any time, and from time to time, to surrender or terminate some or all of the development or other rights reserved herein by recording a statement to that effect with the Clerk and Recorder. Notwithstanding the termination of the rights reserved to Declarant as provided herein, Declarant or a related party may continue to own Units in the Project. By virtue of such ownership, Declarant may continue to influence and impact operation of the Association through the exercise of its voting rights, including election of Board members and the possible appointment of persons related to Declarant to committees of the Board.

ARTICLE 18 ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO COMMON ELEMENTS

18.1 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 change in color, texture, street number, signage, doors or windows), or that in any manner affect the Common Elements (including installation of air conditioning units, spas, fireplaces, built-in cabinetry, skylights, and moving or removing structural walls or columns), shall be made unless first approved in writing by the Board. Declarant shall be exempt from any requirement to obtain any approvals under the provisions of this Article 18 until termination or expiration of Declarant's Development Rights and Special Declarant Rights pursuant to Section 17.5 above. Notwithstanding the foregoing, a Unit Owner may repaint or refinish the surface of any Common Element that is interior to that Unit and a Commercial Unit Owner may replace an approved sign with a new sign reflecting a change in the name of the occupant of the Commercial Unit or a change in the trademark or logo of the occupant of the Commercial Unit, provided such new sign is placed in the same general location as, and is not materially larger than and otherwise reasonably similar in structure and visual presentation to, the sign it replaces, without the prior written approval of the Board. The Board shall respond to any written request for approval of a proposed addition, alteration or improvement within thirty days after the complete submission of the plans, specifications and other materials and information that the Board may require in conjunction therewith. If the Board fails to approve or disapprove any request within thirty days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Board. In the event the Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment such that any modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Board has the absolute right to deny any requested changes, except that the Owners of the Commercial Units may override Board decisions regarding certain matters as provided in Section 9.3.2(a) above and the Owners of the Residential Units may override Board decisions regarding certain matters as provided in Section 9.3.2(c) above.

18.2 **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 that either (a) approval has been given by the Board or (b) such application is made by Declarant during the Period of Declarant Control, then the application shall be executed on behalf of the Association by an authorized officer of the Association, provided further that no liability shall arise on the part of the 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 claim for injury to person or damage to property arising therefrom.

18.3 **ARCHITECTURAL COMMITTEE AND CONTROL.**

18.3.1 *Architectural Committee.* The Board shall have the right, without the obligation, to establish an Architectural Review Committee (the “*Architectural Committee*”) that shall be responsible for such matters as may be assigned by the Board, including the following: establishment and administration of architectural or design guidelines, 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 Board may request. Notwithstanding the foregoing, during the Period of Declarant Control, Declarant has the right to appoint the members of the Architectural Committee. During any period when the Architectural Committee is not established by the Board, the Board shall exercise the powers of, and shall act as, the Architectural Committee, and references in this Declaration to the Architectural Committee shall, during such periods, be deemed to be references to the Board.

18.3.2 *Approval of Additions or Modifications to Units.* No Owner shall undertake any work in or around a Unit that would jeopardize the structural integrity, soundness, safety, or operation of any Unit, any Common Element or the Project or impair an easement thereon. In addition, no Owner shall undertake any work in or around a Unit that would jeopardize the water intrusion barriers or sound transmission coefficient rating of any wall assembly or partition within the Project. No Owner shall make any material modifications to the exterior of a Unit or to any Utilities that serve more than such Owner’s Unit, until and unless Plans shall have been submitted to and approved by the Architectural Committee and First Mortgagees, to the extent required under any First Mortgages encumbering affected Units. The Plans shall be prepared by reputable architects and engineers experienced in the design of structures similar to the Project. The Architectural Committee may refuse to approve any Plans that adversely affect another Unit, the Common Elements or the Project. In passing upon such Plans, the Architectural Committee shall consider the suitability of the proposed improvement, the materials of which the proposed improvement is to be constructed, and the effect of the proposed improvements on the soundness, safety, operation, and value of the Project. All such projects shall be performed by reputable contractors experienced in the construction of structures similar to the improvements proposed. The contractors shall carry general liability insurance in such types and amounts as the Association reasonably determines and shall provide the Association with a certificate of insurance evidencing such insurance and naming the Association, Unit Owners, and First Mortgagees as additional insureds. Each Owner shall obtain such other insurance during any period of construction covering such risks and in such amounts as is prudent under the circumstances, including builder’s risk insurance.

18.3.3 *Approval of Plans.* The Architectural Committee shall vote to approve or disapprove Plans (including resubmission of disapproved Plans that have been revised) within forty-five days after submission of all required information. Any disapproval by the Architectural Committee shall be in writing and shall set forth in reasonable detail the nature of the disapproval. If

the Architectural Committee fails to respond in such 45-day period, it shall be deemed to have approved the Plans. The costs and expenses incurred by the Architectural Committee in obtaining professional review or assistance shall be borne by the Owner submitting Plans.

18.3.4 *Liability for Plans.* Neither the Association nor the Architectural Committee shall be liable in damages to anyone submitting Plans for approval or to any Unit Owner by reason of mistake in judgment, negligence, gross negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any Plans or in connection with the enforcement of the covenants contained in this Section 18.3. Every Unit Owner who submits Plans for approval agrees that (a) it will not bring any action or suit against the Association or the Architectural Committee to recover damages in connection with the submission of such Plans for approval, whether such Plans are approved or disapproved and (b) it will indemnify and hold harmless Association and Architectural Committee in connection with any action or suit brought by a third party in connection with such Plans. Such indemnification will include all costs of defense. Approval by the Architectural Committee shall not be deemed to constitute any representation or assurance of compliance with the requirements of any applicable laws, including local building codes; it shall be the sole responsibility of the Unit Owner or other person submitting Plans to comply therewith.

18.4 ASSOCIATION RIGHT TO REMOVE UNAUTHORIZED ALTERATIONS, ADDITIONS OR IMPROVEMENTS. The Association, upon the majority approval by the Board and 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.

ARTICLE 19 MORTGAGEE'S RIGHTS

The following provisions are for the benefit of Agencies and 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, the Articles, Bylaws and the Rules and Policies of the Association.

19.1 TITLE TAKEN BY FIRST MORTGAGEE. Any First Mortgagee of record against a Unit that obtains title to a 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 from and after the date title to the Unit is acquired.

19.2 DISTRIBUTION OF INSURANCE OR CONDEMNATION PROCEEDS. To the extent any insurance proceeds or condemnation awards are to be distributed among Owners of Units (as opposed to being paid to the Association or a trust designated by the Association) for losses to, or taking of, all or part of any such Units or 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 as to which such distribution is made.

19.3 RIGHT TO PAY TAXES AND CHARGES. First Mortgagees may, jointly or severally, pay taxes or other charges that are in default and that may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new hazard 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.

19.4 FINANCIAL STATEMENT. Upon written request from any Agency or First Mortgagee, the Association shall deliver to such Agency or First Mortgagee a copy of the most recent financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or First Mortgagee. If an audited financial statement is unavailable, the First Mortgagee or Agency may have one prepared at its expense.

19.5 NOTICE OF ACTION. Any First Mortgagee and any Agency that holds, insures or guarantees a First Mortgage, upon written request to the Association (which request shall include the First Mortgagee's or Agency's name and address and the subject Unit's identifying number), will be entitled to timely written notice of:

19.5.1 If affecting the subject Unit, any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements allocated to the Unit (excluding changes resulting from the exercise of Declarant Rights permitted under Article 17 hereof) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common Elements are restricted;

19.5.2 Any amendment set forth in Sections 20.3 and 20.4 below;

19.5.3 Any proposed termination of the common interest community;

19.5.4 Any condemnation loss or any casualty loss that affects a material portion of the Project or that affects any Unit on which such First Mortgagee or Agency holds, insures or guarantees a First Mortgage;

19.5.5 Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage when such delinquency has continued for a period of sixty (60) days;

19.5.6 Any lapse, cancellation or material modification of any casualty insurance policy maintained by the Association pursuant to Article 10; and

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

19.6 ACTION BY MORTGAGEE. If this Declaration or the Association Documents require the approval of any Agency or Mortgagees then, if any Agency or Mortgagee fails to respond to any written proposal for such approval within sixty (60) days after such Agency or Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Agency or Mortgagee shall be deemed to have approved such proposal, provided that the notice was delivered to the Agency or Mortgagee by certified or registered mail, return receipt requested.

ARTICLE 20
DURATION OF COVENANTS AND AMENDMENT

20.1 **TERM.** The covenants and restrictions of this Declaration shall continue and remain in full force and effect until expiration of the term of the Land Lease or until this Declaration is terminated as set forth in Section 20.2 below, whichever occurs first. Upon expiration of the term of the Land Lease, the fee simple determinable estate of all Owners shall terminate and all interest of the Owners in their Units and the Project shall automatically revert to Landlord or its successor(s) in interest, without necessity of any notice, action, or demand or the recordation of any document in the office of the Clerk and Recorder. In addition, the Ground Lease provides lessor with an option to purchase a Unit at any time after the end of the 47th lease year of the Ground Lease, for a purchase price equal to the Fair Market Value of the Unit.

20.2 **TERMINATION.** By vote or agreement of (a) Owners holding sixty-seven percent (67%) or more of the Voting Interests and (b) First Mortgagees holding mortgages on sixty-seven percent (67%) or more of the Units encumbered by mortgages, Unit Owners may vote that the Units are obsolete and that the Project should be terminated. In such instance, the Association shall record a notice setting forth such fact or facts signed by 67 percent of Owners and First Mortgagees, and upon the recording of such notice (the date of such recording referred to as the “*Termination Date*”), the entire premises shall thereafter be free and clear of the provisions contained in this Declaration, the Condominium Map and the Association Documents. Promptly following the Termination Date, the Association shall proceed to liquidate and distribute its assets and Common Elements to the Unit Owners according to the procedure set forth in the Act and the Nonprofit Act.

20.3 **AMENDMENT.** Except as otherwise provided in this Declaration, this Declaration, or any provision herein, may be amended at any time by vote or agreement of Owners holding sixty-seven percent (67%) or more of the Voting Interests, provided that approval by 67 Percent of Owners and First Mortgagees shall be required if the amendment to the Association Documents adds or deletes any material provisions that establish, provide for, govern or regulate any of the following:

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

20.3.2 Hazard Insurance or fidelity insurance requirements;

20.3.3 Responsibility for maintenance and repair of the Project;

20.3.4 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community other than as set forth in this Declaration;

20.3.5 Boundaries of any Unit, except as provided in Sections 4.7 through 4.9 and Article 17;

20.3.6 Convertibility of Units into Common Elements, except as provided herein;

20.3.7 Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey its Unit;

20.3.8 Establishment of self-management by the Association where professional management has been required by any Agency or First Mortgagee;

20.3.9 Any provision that is for the express benefit of an Agency or First Mortgagee regardless of whether the amendment is material; and

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

And provided that approval by 67 Percent of Owners and First Mortgagees by Class shall be required if the amendment to the Association Document adds or deletes any material provisions that establish, provide for, or govern or regulate any of the following:

20.3.11 Voting;

20.3.12 An increase in General Assessments by more than twenty-five percent (25%) of the previously assessed amount, Assessment liens or subordination of such liens;

20.3.13 Reallocation of Expense Sharing Ratios, or rights to use or control the Common Elements other than as provided herein; and

20.3.14 Imposition of any restrictions on the leasing of Units other than the restrictions set forth herein.

20.4 APPROVAL FOR CERTAIN ACTIONS. Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least 67 Percent of Owners and First Mortgagees have given their prior written approval, the Association may not:

20.4.1 Reallocate the Expense Sharing Ratios or obligation of any Unit in order to levy assessments or charges, or allocate distribution of hazard insurance proceeds or condemnation awards;

20.4.2 Partition or subdivide any Unit (except as specifically provided herein);

20.4.3 Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission other than the grant of easements for public utilities or other public purposes consistent with the intended use of the Common Elements and other than as set forth in Article 18;

20.4.4 Except as provided under Section 10.4 and 14.5, use hazard insurance proceeds for losses to any part of the Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Project; or

20.4.5 Terminate or enter into an amendment to the Land Lease that would increase payments under the Land Lease; or

20.4.6 By act or omission seek to abandon or terminate the common interest community created hereby.

20.5 **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 attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Condominium Map to the fullest extent permitted under this Declaration and the Act.

ARTICLE 21 INDEMNIFICATION

To the extent (i) permitted by applicable law and (ii) not covered by the insurance required under Article 10 above, each Unit Owner (“*Indemnifying Owner*”), by taking title to a Unit, is hereby deemed to covenant to indemnify, defend, and hold harmless the Association, each other Unit Owner, its First Mortgagee, and their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an “*Indemnified Party*”) from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, operation, management or ownership (as applicable) by such Owner of its Unit or the Limited Common Elements or easement areas associated with such Unit, or the failure of such Owner to perform any obligation with respect to those Limited Common Elements or easement areas associated with such Owner’s Unit that such Owner is required to operate, maintain, and/or repair under the terms of this Declaration. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the Indemnified Party may seek indemnity under this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner’s expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents and witnesses.

ARTICLE 22 ENVIRONMENTAL PROVISIONS

If any discharge, emission, or disposal of Hazardous Materials solely and directly attributable to any action or inaction by an Owner or its Permittees occurs with respect to the Project, such Owner shall cause the cleanup and remediation of any such discharge, emission or disposal of Hazardous Materials, if required by Environmental Laws in effect at such time. To the extent practical, such remediation shall not unreasonably interfere with the Owner’s or its Permittees’ use or occupancy of the affected Unit, the other Units or Common Elements.

ARTICLE 23 OWNER ACKNOWLEDGEMENTS

Each Owner, by purchasing a Unit, acknowledges, covenants and agrees that Owner has been made aware of the following matters affecting the Community and the Property and Owner's use and enjoyment thereof and accepts those matters as known conditions affecting the Unit:

23.1 DECKS (USE AND CONSTRUCTION). Owner acknowledges that the Limited Common Element allocated to its Unit as a deck, if any, has been constructed with concrete, which will crack and settle over time. Non-structural cracks, exposed aggregate, imperfections, fissures and other concrete finish variability are normal and Owner accepts that condition. Owner further acknowledges that use of the deck by Owner, including use of grills, patio furniture and clothes drying devices, is restricted as provided in the Rules adopted hereunder.

23.2 LOCATION. The Project is benefited by its location near a transit center. Owner acknowledges and agrees that this location may include: (i) noise, odors, and aesthetic impacts that may not always be desirable, (ii) annoying noise, odors and congestion resulting from transit, commercial, entertainment, and retail facilities both within the Project and nearby, and (iii) traffic congestion, crime, panhandling and other aspects of life near a transit center, and Owner agrees that all such matters are acceptable to Owner.

23.3 NATURAL MATERIALS; CONCRETE, FLOORS, CABINETS, GRANITE, TILE AND CEILINGS. Owner acknowledges that the Unit and Common Elements contain natural materials that will vary in color, consistency and finish, and that these inconsistencies are inherent in natural materials. These inconsistencies are inherent and expected in columns, floors, cabinetry, granite, tile and ceilings throughout the Project, including areas within the Unit. In addition, the Unit has been constructed with concrete that will crack and settle over time. Non-structural cracks, exposed aggregate, imperfections, patches, blemishes, fissures and other concrete finish variability are normal and Owner agrees that all such conditions are acceptable to Owner. Owner further acknowledges that railings attached to terraces and balconies that are constructed of a fiberglass material, including those appurtenant to the Unit, if any, may "hum" in windy conditions and that the aluminum window system contracts and expands as the weather warms and cools, which may result in "popping" noises. Owner acknowledges that such noises shall not constitute an interference or disruption to the use and quiet enjoyment of the Unit.

23.4 NOISE TRANSMISSION. Floor surface materials, particularly hardwood, concrete, and tile, within a Unit may transmit noise to other Units. Such noise is consistent with proper uses of a Unit, does not constitute a disruption to the use and quiet enjoyment of a Unit, and is accepted by Owner as an anticipated aspect of Condominium living. Owner acknowledges that no representation has been made by Declarant or Association, or by agents, brokers or other representatives of Declarant or Association, that any Unit is or will be soundproof or that sound will not be transmitted from one Unit to another.

23.5 SMOKING. Owner acknowledges that smoking is permitted only within individual Units. Smoking is prohibited in and around all Common Elements, including hallways, elevators, lobby, Parking Spaces and balconies or decks allocated as Limited Common Elements to individual Units. Owners who smoke within a Unit must keep their entry doors shut so as to not allow smoke to enter Common Elements.

23.6 **ROOF.** Owner acknowledges that the roof of the building is flat and that snow and rainwater will accumulate on portions of the roof system. In order to minimize water intrusion or penetration, it is necessary that the Building roof systems, including the drainage system for same, be regularly maintained by the Association or other parties responsible for such maintenance under this Declaration.

23.7 **AMENITIES.** No interest in or right to use any amenity located on or near the Project, such as spas, health club facilities or the like, shall be conveyed to an Owner pursuant to this Declaration. The owners of nearby facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of the Community.

23.8 **NO VIEW EASEMENT.** There exists no easement or other right, express or implied, for the benefit of the Owner, the Unit, or the Project for light, view, or air contained in this Declaration, or any other binding agreement or instrument. Owner acknowledges that the view, light and air existing may be changed or eliminated by future events wholly outside the control of the Association.

23.9 **WALLS AND COLUMNS.** Owner acknowledges and agrees that, unless Owner has obtained the prior written approval of the Association, Owner may not penetrate the surfaces of perimeter walls or concrete columns or pillars located within the Unit for any reason. Owner acknowledges that such penetrations can damage the Unit or cause damage to another Unit.

23.10 **WINDOWS.** Owner acknowledges and agrees that Owner may not place any film on the surface of, or tint, any window surface in the Unit. Owner acknowledges and agrees that placing any film on the surface of, or tinting, any window will void any express or implied warranties resulting in loss and damage to the Association, the Project, and other Owners.

23.11 **STORAGE AREAS.** Each Owner and occupant of a Unit acknowledges that the Storage Areas may have support columns and other mechanical equipment located therein that may impact or affect the use and enjoyment of such Storage Areas.

23.12 **CONDENSATION/HUMIDITY.** The exterior window (and door) system is designed to mitigate the migration of cold from the outside environment to the interior of the Unit. In very cold conditions or in relatively high humidity within the Unit, condensation, frost, and ice may form on the windows, doors, or frames thereof, which moisture can cause various problems including damage to flooring, walls, and other property in contact with the moisture. Owner acknowledges and agrees that it is Owner's responsibility to maintain the humidity and temperature within the Unit within levels specified within the Owner Maintenance Manual and so as to avoid the formation of condensation on the windows.

23.13 **MOLD.** Mold, mildew, fungi and other microbiological organisms (collectively, "Mold") are present in soil, air, building products and elsewhere in the environment. Mold can grow in various environments with moisture and organic materials such as building products. It is currently unclear whether, or the extent to which, Mold is a cause of potential health problems. Owner acknowledges that neither the Association nor Declarant is qualified or has not undertaken to evaluate the role, if any, that Mold growth may have on indoor air quality. Owner acknowledges that there exists no representation or warranty, express or implied, regarding the current or future presence or absence of Mold in the Unit or any Common Elements in the vicinity of the Unit or in the building. It

is recommended that Owner, at its expense, perform such inspections as desired and consult with such experts or medical practitioners as desired regarding the occurrence and effects of Mold and the potential sensitivity Owner and Owner's family members may have to Mold.

There is no practical way to eliminate all Mold from an indoor environment, but excessive Mold growth can be controlled by controlling moisture. When there is excessive moisture or water indoors, Mold growth can and will occur, particularly if the condition is not addressed. The Owner understands that the Owner is in a superior position to prevent Mold growth within the Unit. As such, Owner agrees to maintain the Unit, including any Limited Common Elements allocated to the Unit, in such manner as to reduce the potential for Mold growth, including without limitation preventing and promptly repairing plumbing leaks, keeping dryer vents and fans clear and functioning, and controlling the humidity in the Unit to prevent condensation on windows and other surfaces. Owner agrees to perform periodic inspections of the Unit, including any Limited Common Elements allocated to the Unit, for the presence of Mold or conditions which may increase the likelihood of Mold growth and to monitor continually such areas for excessive moisture or water. If Owner discovers excessive moisture or water within the Unit, or any Limited Common Elements allocated to the Unit, Owner agrees to take necessary steps to immediately eliminate the source of water or moisture, recognizing that failing to do so can result in damage and Mold growth. Owner acknowledges that the Association and other Owners are relying on Owner to perform the foregoing services in order to assure that the Unit and the Building as a whole function in the manner designed. Owner agrees to be fully and solely responsible for any liability or damage resulting from Owner's failure to perform as agreed in this Section 23.13.

23.14 SECURITY. THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE PROPERTY OR WITHIN THE PROJECT; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER PERMITTEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, IS NOT A PROVIDER OF SECURITY AND THAT SUCH PARTIES SHALL NOT HAVE A DUTY TO PROVIDE SECURITY ON THE PROPERTY OR WITHIN THE PROJECT. FURTHERMORE, THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY OR THE PROJECT AND COMMIT CRIMINAL ACTS ON THE PROPERTY OR WITHIN THE PROJECT. FURTHERMORE, THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING, DOES NOT GUARANTEE THAT CRIMINAL ACTS ON THE PROPERTY OR THE PROJECT WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER AND OCCUPANT TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER AND OCCUPANT. THE ASSOCIATION, DECLARANT, AND ANY ENTITY RELATED TO THE FOREGOING SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN.

ARTICLE 24 GENERAL PROVISIONS

24.1 **SUPPLEMENT TO APPLICABLE LAW.** The provisions of this Declaration shall be in addition to and supplemental to all applicable provisions of law.

24.2 **CONVEYANCE OF UNITS.** All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

24.3 **ESTOPPEL CERTIFICATES.** Each Unit Owner or the Association, as the case may be, shall, from time to time, within ten days after receipt of written request from any other Unit Owner or First Mortgagee execute, acknowledge and deliver to such other Unit Owner, First Mortgagee, or its designee a certificate ("*Estoppel Certificate*") stating to the best of its knowledge, without inquiry:

24.3.1 That the terms and provisions of this Declaration are unmodified and are in full force and effect, or, if modified, identifying any such modifications;

24.3.2 Whether there is any existing default hereunder by any other Owners or the Association and, if so, specifying the nature and extent thereof;

24.3.3 Whether there are any sums that the Owner executing such Estoppel Certificate is entitled to receive or demand from any of the other Owners, and if there is any such sum, specifying the nature and amount thereof and method of computation;

24.3.4 In the case of the Association, confirmation of the current Budget, and whether there are any outstanding, unpaid Assessments, or currently proposed Assessments;

24.3.5 Whether an Owner or the Association has performed or is performing work, the cost of which is chargeable in whole or in part to any of the other Owners under the provisions hereof, but has not yet been charged to any such Owner, and if there be any such work, specifying the nature and extent thereof;

24.3.6 The nature and extent of any set-offs, claims, counterclaims or defenses then being asserted, or otherwise known by an Owner or the Association against the enforcement of any other Owner's obligations hereunder;

24.3.7 Whether any Owner has requested that a matter be submitted to arbitration and the nature of any arbitration proceeding or finding made within ninety days preceding the date of the Estoppel Certificate; and

24.3.8 Such other matters as may be reasonably requested.

24.4 **UNAVOIDABLE DELAY.** No Owner shall be deemed in default in the performance of any obligation required by the Association Documents other than an obligation to pay money, if and so long as the non-performance is directly caused by Unavoidable Delay. Such Owner's time for performance shall be extended during any period of Unavoidable Delay, provided that the Owner unable to perform shall promptly notify the Association of the existence of any Unavoidable Delay,

shall periodically keep the Association informed in writing of the status of the Unavoidable Delay and the performance of its obligation, and shall diligently pursue completion of performance.

24.5 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 applicable law. Any provision in this Declaration in conflict with the requirements of applicable law shall not be deemed invalid as a whole but shall be adjusted as is necessary to comply with applicable law.

24.6 DECLARANT'S USE. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Units and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Units and development and construction of Improvements. The foregoing includes locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Unit or Common Elements, as designated in this Declaration or any other recorded document. Further, nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals:

24.6.1 to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

24.6.2 to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, or sales or leasing office in connection with the development, construction or sale of any property; and/or

24.6.3 to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

24.7 LIMITATION ON LIABILITY. The Association, the Board of Directors, the Architectural Committee, Declarant, and the officers, directors, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 24.10 shall apply to this Section.

24.8 NO REPRESENTATIONS, GUARANTIES OR WARRANTIES. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Architectural Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 24.10 below shall apply to this Section.

24.9 DISCLAIMER REGARDING SAFETY. DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM

ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ARCHITECTURAL COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, OR IN THE ARTICLES OF INCORPORATION, BYLAWS AND RULES AND POLICIES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 24.10 SHALL APPLY TO THIS SECTION.

24.10 **WAIVER.** By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges the Declarant, the Association, the Board of Directors, the Architectural Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including without limitation, those contained in Sections 24.7 through 24.9.

24.11 **ENFORCEMENT AND RIGHTS OF ACTION.**

24.11.1 *Enforcement.* Except as otherwise provided in this Declaration, the Association, the Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Likewise, the Association, the Board, Declarant or any Unit Owner shall have the right to enforce compliance with any decision made by the Board pursuant to authority granted to the Association in the Association Documents. Failure by the Board, the Association, Declarant or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. In any action instituted or maintained for enforcement of the Association Documents, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court or arbitrator.

24.11.2 *Implied Rights and Obligations.* The Association may exercise any right or privilege expressly granted to the Association by applicable law and by the Nonprofit Act.

24.12 **DISPUTE RESOLUTION.**

24.12.1 *Regulatory Disputes.* Any claim, controversy, or dispute involving (a) classification by the Board of constituent categories (but not specific dollar amounts themselves) of Limited or General Common Expenses; (b) proposed Rules that will have a material adverse effect upon the permitted uses of Owners within the Units; or (c) any other matters upon which the Association and an aggrieved party may mutually agree, shall be resolved by binding arbitration in accordance with the rules established by the Denver office of the American Arbitration Association according to its "fast track" or other available expedited proceedings. The single arbitrator shall be an experienced operator or manager of a residential condominium or planned community project in the Denver metropolitan area. Judgment upon the determination of the arbitrator may be entered and enforced by the District Court for the County. A condition precedent for any arbitration shall be

reconsideration by the Board of the matter in question in an effort to resolve such dispute without the need for binding arbitration.

24.12.2 *Other Disputes Between the Parties.* Any controversy, claim, dispute, or other matter in question (collectively, “Claim”) between or among the Association, one or more Owners, Declarant, Directors of the Association, or any other person subject, or agrees to be bound by, to this Declaration must be determined by binding arbitration in accordance with Colorado’s Uniform Arbitration Act, Colorado Revised Statutes Section 13-22-201, *et seq.*, and the provisions set forth in this Section 23.7.2. “Claim” will not include: (i) any dispute described in subsection Section 23.7.1 above, (ii) any action by the Association to collect Assessments or other amounts due from any Owner, (iii) any action by the Association to obtain a temporary restraining order or emergency equitable relief and such ancillary relief as a court may deem appropriate to maintain the status quo, (iv) any suit between Owners which does not involve the Declarant or the Association as a party, to the extent such suit asserts a cause of action independent of the Association Documents, or (v) any action in which an indispensable party is not a party bound by this Declaration unless such indispensable party agrees to be bound by this Declaration for purpose of resolution of the Claim. By accepting the deed to a Unit, each Owner waives any right to a judicial proceeding and a jury trial in connection with the resolution of any Claim.

(a) Mediation.

i. Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by any party. The parties shall endeavor to resolve Claims between them by mediation which shall be conducted by the arbitrator selected as provided herein in accordance with such arbitrator’s mediation rules. Request for mediation shall be filed in writing with the other party(ies) and with the arbitrator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties.

ii. The parties shall share the mediator’s fee and any filing fees pro rata according to the number of parties. The mediation shall be held in the arbitrator’s Colorado offices in or physically closest to Denver, Colorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(b) Arbitration.

i. Any Claim shall be subject to and decided by arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with subsection (a) of this Section 23.7.2.

ii. Claims that are not resolved by mediation shall be decided by arbitration which shall be conducted by the arbitrator in accordance with the arbitrator’s arbitration rules as then currently in effect. The demand for arbitration shall be filed in writing with the other party(ies) and with the arbitrator.

iii. The parties shall share the arbitrator's fee and any filing fees pro rata according to the number of parties.

iv. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. All Claims are subject to the laws, rules and regulations of the State of Colorado and its political subdivisions, including the Construction Defect Reform Act, Colorado Revised Statutes Section 13-20-801 *et seq.* with respect to any claims asserted for construction or design defects.

v. Except as otherwise permitted by this Section 23.7.2(b)v, no arbitration of any Claim shall include, by consolidation or joinder or in any other manner, any person not an Owner, Declarant, the Association or a Director of the Association, except by written consent of one or more parties and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any Claim not described in the written consent or with a person or entity not named or described therein. Notwithstanding the foregoing, Declarant shall have the right to join its architects, engineers, contractors, subcontractors, materialmen, and any other construction professionals rendering services, performing work, or providing materials for the Property in any arbitration to the extent Declarant obtains the consent of such other parties or has the right to force joinder of such other parties.

vi. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

vii. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator shall award the prevailing party all reasonable costs and expenses, including attorney fees, costs and expert witness fees.

(c) Arbitrator. The parties may agree on an arbitrator. If they are unable to agree, the parties will contact the Judicial Arbitrator Group, the Colorado Home Builders Association/Better Business Bureau Alternative Dispute Program, the Westminster Legal Resolution Center or other agreed upon dispute resolution organization or service (in that order of priority) and will use its procedures to select an arbitrator.

24.12.3 Initiation of Litigation by the Association. In addition to compliance with the foregoing alternative dispute resolution procedures set forth in this Section 24.12, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Owners holding sixty-seven percent (67%) of the Voting Interests as provided in Section 9.3.1, except that no such approval shall be required for actions or proceedings: (i) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens; (ii) initiated to challenge ad valorem taxation or condemnation proceedings; (iii) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or (iv) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. This Section

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

24.13 **NOTICES.** All notices, demands, or other communications shall be in writing. Each Owner shall register a designated representative with the Association, including mailing address and facsimile telephone number. If no such registration is made, notices shall be sent to such Owner at the address of the Unit and shall be deemed properly given to the Owner if delivered to the last address so registered with the Association, or if none then to the Unit address as provided above. Notices shall be given to the Declarant and the Association at:

Basecamp Shops & Residences LLC
Attn: David O'Neil
777 Pearl Street, Suite 200
Boulder, CO 80302
Fax: _____

with a copy to:

Richard Nehls, Esq.
Packard and Dierking, LLC
WaterStreet
2595 Canyon Blvd., Suite 200
Boulder, CO 80302
Fax: (303) 447-0451

Notices shall be given to First Mortgagees who have registered with the Association pursuant to Section 19.5 above. Notices may be delivered, sent by facsimile transmission, or sent by certified U.S. mail, postage prepaid (provided that if a notice is sent by facsimile transmission, a copy shall be mailed by certified U.S. mail the next business day). All notices shall be effective upon receipt. The designated representative, address, or facsimile telephone number may be changed by notifying the Association in the manner described above, and upon any such change by any Owner, such Owner may, at its election and after notice thereof has been given, record an instrument amending the representative, address and/or facsimile telephone number of such Owner for purposes of this Section.

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

24.15 **NUMBER AND GENDER.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

24.16 **CONFLICTS BETWEEN DOCUMENTS.** In case of conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

24.17 **DECLARANT'S OWNERSHIP OF UNSOLD UNITS.** Unless expressly prohibited by the Act, Declarant shall enjoy the same rights and assume the same duties with respect to all unsold Units still owned by Declarant as the initial and subsequent Owners (other than Declarant) have in connection with their Units.

24.18 **COUNTERPARTS.** Any amendment to this Declaration may be executed in several counterparts and all counterparts so executed shall constitute one document binding on all signatories thereof, notwithstanding that all signatories have not executed the original or the same counterpart. In the event that any such document is executed in counterparts, those pages from the counterparts on which signatures and/or certificates of notaries public appear may be attached to the original instrument for recordation thereof, provided that such recorded document shall also contain a certification of the Secretary of the Association that all counterparts, as executed, are identical.

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IN WITNESS WHEREOF, the Declarant has set its hand and seal on the day and year first set forth above.

DECLARANT:

BASECAMP SHOPS & RESIDENCES LLC, a
Colorado limited liability company

By: _____
David G. O’Neil, Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2018,
by David G. O’Neil as Manager of Basecamp Shops & Residences LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

**LANDLORD CONSENT TO
CONDOMINIUM DECLARATION AND CONDOMINIUM MAP
OF BASECAMP SHOPS & RESIDENCES**

BRYNN GREY X, LLC, a Colorado limited liability company, the owner of the Property and Landlord under the Land Lease dated November 3, 2017 and recorded on November 8, 2017 at Reception No. 1156341 in the records of the Summit County Clerk and Recorder relating to the Property hereby consents to the recording of the Condominium Declaration and the Condominium Map of Basecamp Shops and Residences as well as the imposition of the covenants affecting the Property contained therein. All capitalized terms contained herein shall have the same meaning assigned to them in the foregoing Declaration.

BRYNN GREY X, LLC, a
Colorado limited liability company

By: _____
David G. O’Neil, Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Landlord Consent to Condominium Declaration and Condominium Map of Basecamp Shops & Residences was acknowledged before me this ____ day of _____, 2018, by David G. O’Neil as Manager of Brynn Grey X, LLC.

Witness my hand and official seal.

Notary Public
My commission expires: _____

**EXHIBIT A TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
PROPERTY SUBJECT TO DECLARATION**

LEGAL DESCRIPTION:

A Leasehold interest in the following property:

A portion of Lot 2A, Summit Stage Transit Center, located in the Town of Frisco, Summit County, State of Colorado more particularly described as follows:

**EXHIBIT B TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
COMMERCIAL AND RESIDENTIAL UNITS**

COMMERCIAL UNITS:

Unit C101
Unit C102
Unit C103
Unit C104
Unit C105
Unit C106

RESIDENTIAL UNITS:

Unit R107 (Deed Restricted)
Unit R201
Unit R202
Unit R203 (Deed Restricted)
Unit R204 (Deed Restricted)
Unit R205 (Deed Restricted)
Unit R206 (Deed Restricted)
Unit R207 (Deed Restricted)
Unit R208 (Deed Restricted)
Unit R209 (Deed Restricted)
Unit R210 (Deed Restricted)
Unit R211 (Deed Restricted)
Unit R212 (Deed Restricted)
Unit R213 (Deed Restricted)
Unit R214 (Deed Restricted)
Unit R215 (Deed Restricted)
Unit R216 (Deed Restricted)
Unit R217 (Deed Restricted)
Unit R218 (Deed Restricted)
Unit R219 (Deed Restricted)
Unit R220 (Deed Restricted)
Unit R221
Unit R222
Unit R223
Unit R224

**EXHIBIT C-1 TO
 CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
 GENERAL EXPENSE SHARING RATIOS AND VOTING INTERESTS**

Unit Number	Gross Floor Area	Votes	General Expense Sharing Ratio
C101	1,274	13	6.38%
C102	951	10	4.76%
C103	471	5	2.36%
C104	958	10	4.80%
C105	1,275	13	6.38%
C106	1,277	13	6.39%
R107	573	6	2.87%
R201	522	5	2.61%
R202	558	6	2.79%
R203	519	5	2.60%
R204	612	6	3.06%
R205	520	5	2.60%
R206	615	6	3.08%
R207	526	5	2.63%
R208	628	6	3.14%
R209	528	5	2.64%
R210	526	5	2.63%
R211	520	5	2.60%
R212	518	5	2.59%
R213	525	5	2.63%
R214	519	5	2.60%
R215	537	5	2.69%
R216	531	5	2.66%
R217	624	6	3.12%
R218	526	5	2.63%
R219	614	6	3.07%
R220	517	5	2.59%
R221	617	6	3.09%
R222	518	5	2.59%
R223	559	6	2.80%
R224	519	5	2.60%
TOTALS:	19,978	200	100%

**EXHIBIT C-2 TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
COMMERCIAL EXPENSE SHARING RATIO**

Unit Number	Gross Floor Area	Votes	Commercial Expense Sharing Ratio
C101	1,274	13	20.53%
C102	951	10	15.32%
C103	471	5	7.59%
C104	958	10	15.44%
C105	1,275	13	20.54%
C106	1277	12.77	20.58%
TOTAL	6,206	62	100%

**EXHIBIT C-3 TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
RESIDENTIAL EXPENSE SHARING RATIO**

Unit Number	Gross Floor Area	Votes	Residential Expense Sharing Ratio
R107	573	6	4.16%
R201	522	5	3.79%
R202	558	6	4.05%
R203	519	5	3.77%
R204	612	6	4.44%
R205	520	5	3.78%
R206	615	6	4.47%
R207	526	5	3.82%
R208	628	6	4.56%
R209	528	5	3.83%
R210	526	5	3.82%
R211	520	5	3.78%
R212	518	5	3.76%
R213	525	5	3.81%
R214	519	5	3.77%
R215	537	5	3.90%
R216	531	5	3.86%
R217	624	6	4.53%
R218	526	5	3.82%
R219	614	6	4.46%
R220	517	5	3.75%
R221	617	6	4.48%
R222	518	5	3.76%
R223	559	6	4.06%
R224	519	5	3.77%
TOTALS:	8863	138	100%

**EXHIBIT D TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
ALLOCATION OF STORAGE AREAS**

Storage Area Number	Allocated to Unit Number
SA1	R201
SA2	R202
SA3	R203
SA4	R204
SA5	R205
SA6	R206
SA7	R207
SA8	R208
SA9	R209
SA10	R210
SA11	R211
SA12	R212
SA13	R213
SA14	R214
SA15	R215
SA16	R216
SA17	R217
SA18	R218
SA19	R219
SA20	R220
SA21	R221
SA22	R222
SA23	R223
SA24	R224
SA25	R107

**EXHIBIT E TO
CONDOMINIUM DECLARATION OF BASECAMP SHOPS & RESIDENCES
ALLOCATION OF PARKING SPACES**

Parking Space Number	Allocated to Unit Number
PG1	R202
PG2	R206
PG3	R204
PG4	R209
PG5	R201
PG6	R218
PG7	R217
PG8	R224
PG9	R221
PG10	R223