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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WHITE WOLF TOWNHOMES

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WHITE WOLF TOWNHOMES

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ATTACHMENTS:

SUBORDINATION AGREEMENT

EXHIBIT "A" LEGAL DESCRIPTION OF THE COVERED PROPERTY

EXHIBIT "B" DESCRIPTION OF SALES OFFICES AND FACILITIES



DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
WHITE WOLF TOWNHOMES

THIS DECLARATION is made this 28 day of January, 1997, by SETTLEMENT LLC, a Colorado limited liability company. SETTLEMENT LLC, a Colorado limited liability company, its successors and assigns, shall hereinafter be referred to as "Declarant." Declarant will maintain an office at P.O. Box 7399-331, 400 North Park Avenue, #10B (331), Breckenridge, Colorado 80424.

RECITALS

A. Declarant is the owner of certain real property in the City of Breckenridge, Summit County, which is more particularly described in Exhibit "A" attached hereto, which shall be the Covered Property under this Declaration.

B. Declarant intends to develop on the Covered Property a Common Interest Community as defined in Section 38-33.3-102, C.R.S., named White Wolf Townhomes and described as a residential community consisting of condominium townhouses. Portions of the real estate described in Exhibit "A" will be designated for separate ownership and the remainder will be designated for common ownership solely by the owners of the separate ownership portions. These covenants, conditions and restrictions are imposed upon the Covered Property in order to provide for its management and to enhance and protect the value, desirability and attractiveness of the Covered Property.

D. In furtherance of these objectives, White Wolf Townhomes Owners Association, a Colorado nonprofit corporation, has been or will be incorporated and will manage the Project, maintain and administer the Common Elements, administer and enforce the Governing Documents of the Association, and perform such other acts as may benefit the Project.

NOW, THEREFORE, Declarant submits the Covered Property to the provisions of the Colorado Common Interest Ownership Act, Sections 38-33.3-101, et seq., Colorado Revised Statutes (the "Act") as may be further amended from time to time and in the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable; and

FURTHER, Declarant covenants and agrees that the Covered Property, the Project and all of the Units, including any improvements added or constructed on or about the Project in the future, shall be held, conveyed, assigned, hypothecated, encumbered, leased, used, occupied and improved

subject to the following limitations, easements, restrictions, covenants and conditions, for the purpose of mutually benefiting the Covered Property, the Project and all of the Units, and the future Owners thereof. All of the covenants and restrictions set forth herein shall run with the land, shall be enforceable as equitable servitudes, and shall be binding upon and for the benefit of all parties having or acquiring any right, title or interest in the Covered Property, the Project or any of the Units.

## ARTICLE I

### DEFINITIONS

Each term not otherwise defined in this Declaration or in the Plat (defined below) shall have the meanings specified or used in the Colorado Common Interest Ownership Act, Section 38-33.3-103.

The following terms used in this Declaration are defined as follows:

Section 1. Act. The term "Act" shall mean and refer to the Colorado Common Interest Ownership Act, C.R.S. Sections 38-33.3-101, et seq., as amended from time to time.

Section 2. Affiliate of Declarant. The term "Affiliate of Declarant" shall mean and refer to any person who controls, is controlled by, or is under common control with Declarant. A person controls a declarant if the person: Is a general partner, officer, director, or employee of the Declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the Declarant; controls in any manner the election of a majority of the directors of the Declarant or has contributed more than twenty percent (20%) of the capital of the Declarant. A person is controlled by a declarant if the declarant: Is a general partner, officer, director or employee of the person; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interests of the person. Control does not exist if the powers described in this section are held solely as security for an obligation and are not exercised.

Section 3. Allocated Interests. "Allocated Interests" shall mean and refer to the following interests allocated to each Unit:

(a) Each Unit is allocated (i) a one-thirtieth (1/30) undivided interest in the common elements ("Common Elements" as defined herein); (ii) one-thirtieth (1/30) of the common expense liability, and (iii) one-thirtieth (1/30) of the votes in the Association;

(b) Allocated Interests are assigned to Units on the basis of a fraction of a whole, the numerator being one and the denominator being the total number of Units in the Project. If Units are added to or withdrawn from the Project, the Allocated Interests will be reallocated on the basis of this formula.

Section 4. Architectural Committee. The term "Architectural Committee" or "Committee" shall mean and refer to the Architectural Committee created pursuant to the Article of this Declaration entitled "Architectural Control."

Section 5. Articles. The term "Articles" shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Secretary of State of Colorado, as amended from time to time.

Section 6. Assessments. The following definitions shall apply to the assessments described below:

(a) Regular Assessment shall mean the amount which is to be paid by each Owner to the Association for Common Expenses as provided by the terms of this Declaration.

(b) Supplementary Assessment shall mean that, in the event the Board shall determine, at any time or from time to time, that the annual Regular Assessments are not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more Supplementary Assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each Supplementary Assessment, the Board shall revise the annual Budget for such fiscal year as provided in Article VII, Section 7 of the Bylaws, or prepare a new Budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the ratification of such Budget as required by the Act. Upon request, the Board will deliver a summary of the new Budget to any Institutional Holder. Based on such revised or new Budget, the Board may make a Supplementary Assessment for such fiscal year against each Lot or Unit.

(c) Special Assessment shall mean a charge against each Owner and his Unit, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Elements which the Association may from time to time authorize pursuant to the provisions of this Declaration. The Board will deliver to all Owners, by first class mail or otherwise, a summary of the Special Assessment and shall set a date for a meeting of the Owners for purposes of ratification of the Special Assessment as required by the Act.

(d) Reimbursement Assessment shall mean a charge against a particular Owner and his Unit for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his Unit into compliance with the provisions of the Governing Documents, or any other charge designated as a Reimbursement Assessment in this Declaration or Association rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration.

(e) Reconstruction Assessment shall mean a charge against each Owner and his Unit representing a portion of the cost to the Association for reconstruction of any portion of the Common Elements pursuant to the provisions of this Declaration.

Section 7. Association. The term "Association" shall mean and refer to WHITE WOLF TOWNHOMES OWNERS ASSOCIATION, a Colorado nonprofit corporation, its successors and assigns.

Section 8. Board. The term "Board" or "Board of Directors" shall mean and refer to the duly elected Board of Directors of the Association.

Section 9. Boundaries. The following are designated as "boundaries" of each Lot or Unit, as defined below and as depicted on the recorded Plat: **Lot Boundaries.** Those areas and planes defined by the Lot boundary lines on the Plat. Each Lot, bearing a Unit number on the Plat, includes the land, residential structure, garage, spaces and improvements lying within the boundaries described above, and also includes the utilities and utility meters and communications, television, telephone and electrical receptacles and boxes serving that Lot exclusively, whether or not in the boundaries or contiguous, unless the same are maintained by a governmental agency or entity. All Common Elements, other than common roofs, are excluded, and any utilities or other facilities running through or within any Lot or Unit for the purpose of furnishing utility and other service to other Lots or Units and/or the Common Elements are also excluded. **Unit Boundaries** The boundaries of the Unit, or residential structure, constructed upon a portion of the Lot as shown on the recorded Plat, are described as follows: (a) Upper Boundaries: The horizontal plane of the unfinished lower surface of the ceilings, extended to an intersection with the vertical perimeter boundaries. (Space above ceilings, to which access is needed for repair and maintenance of a Unit or of the common roof of adjoining Units is Limited Common Area appurtenant to the adjoining Units); (b) Lower Boundaries: None (due to the fact that each Owner of a Unit owns the Lot beneath his Unit); (c) Vertical Perimeter Boundaries: The planes defined by (i) the center or middle plane of the studs and framing or walls (if not built with studs and framing) of all Party Walls between adjoining Lots or Units, and (ii) the exterior surfaces of all other exterior walls of the Unit. Units may include special portions or pieces of equipment, such as air conditioning compressors, utility meters, meter boxes, utility connection structures, air or gas pump and storage facilities and storage portions, which are situated in buildings or structures that are detached from the Lot or Unit. Such special equipment or storage portions are a part of the Lot or Unit, notwithstanding their non-contiguity with the principal portions. Any portion of parking areas, walkways, decks and/or patios appurtenant to a Unit which are not contained within the Lot boundary lines for that Unit and which are within the Common Area are depicted on the Plat as Limited Common Area.

Section 10. Building. The term "Building" shall mean and refer to all structures containing one or more Units, each identified on the White Wolf Townhomes Master Plan (as hereinafter defined) now or hereafter constructed on the Covered Property.

Section 11. Bylaws. The term "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

Section 12. Common Element. The term "Common Element" shall mean all real property and any improvements thereon or thereto within the Project (other than the Lots and Units) owned by the Owners, each as to an undivided fractional interest, as tenants in common,, for the common use and enjoyment of the Owners, their guests, invitees and tenants. The Common Elements at the time of recording of this Declaration include those areas identified as Common Elements on the recorded Plat of the Covered Property, and shall include any portion of the Property designated as Common Elements on any amendment or supplement to the recorded Plat for the Covered Property,

any and all real and personal property owned or controlled by the Association for the common use and benefit of Owners and the Covered Property, together with all improvements thereon, if any, and any driveways or parking areas not designated as Limited Common Elements. Every Owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of the Common Elements by the Association for the benefit and enjoyment of all Owners in accordance with the provisions of this Declaration, the Articles, Bylaws and any rules and regulations of the Association.

Section 13. Common Expenses. The term "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations for reserves, which may include, without limitation, the following:

(a) maintenance, management, operation, repair and replacement of the Common Elements, and all other areas on the Covered Property which are maintained by the Association;

(b) unpaid Special, Supplemental, Reconstruction and Reimbursement Assessments;

(c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as may be provided in this Declaration or pursuant to agreements with the Town of Breckenridge or other governmental authority having jurisdiction;

(d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners, their Units and the Common Elements to the extent such services are paid for by the Association and not separately and individually billed directly to Owners;

(f) the costs of insurance covering the Common Elements, the Project and the Association;

(g) reasonable reserves as deemed appropriate by the Board;

(h) the costs of bonding of the members of the Board, any professional Managing Agent or any other person handling the funds of the Association;

(i) any taxes paid by the Association;

(j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or portions thereof;

(k) costs incurred by the Architectural Committee or other committees of the Association; and

(l) such other costs or expenses incurred by the Association in connection with the Common Elements, the Governing Documents, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration or the Act.

Section 14. Common Interest Community. The term "Common Interest Community" shall mean and refer to White Wolf Townhomes, a common interest community consisting of townhome condominiums created under the Act. The marketing name for such Common Interest Community is White Wolf Townhomes by Concordia Homes of Colorado.

Section 15. County. The term "County" shall mean and refer to Summit County, Colorado.

Section 16. Covered Property. The term "Covered Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto.

Section 17. Declarant/Grantor. The terms "Declarant" or "Grantor" shall mean and refer to SETTLEMENT LLC, a Colorado limited liability company, its successors and assigns.

Section 18. Declaration. The term "Declaration" shall mean this Declaration, i.e., this document.

Section 19. Development Rights. The term "Development Rights" shall mean and refer to any right or combination of rights reserved by Declarant in this Declaration to:

- (a) add real estate to a Common Interest Community;
- (b) create Units, Common Elements, or Limited Common Elements within a Common Interest Community;
- (c) subdivide Units or convert Units into Common Elements; or
- (d) withdraw real estate from a Common Interest Community.

Section 20. Governing Documents. The term "Governing Documents" shall mean and refer to this Declaration, the Articles, the Bylaws, any operating rules of the Association, and any other documents or amendments to documents which govern the operation of the Project or the Association.

Section 21. Improvements. The term "Improvements" shall include buildings, outbuildings, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks,

plantings, trees and shrubs, poles, signage, signage lighting, exterior storage facilities and other related structures and landscaping improvements of every type and kind.

Section 22. Institutional Holder. The term "Institutional Holder" shall mean and refer to any beneficiary of a first deed of trust or mortgagee of a first Mortgage which encumbers a Unit and which is a bank or savings and loan association or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 23. Limited Common Element. The term "Limited Common Element" shall mean and refer to any Common Element which is for the exclusive use of one or more, but fewer than all, of the Owners of a Lot or Unit and which is or will be appurtenant to the Lot or Unit to which it is allocated. Each such grant of use of the Limited Common Element shall be a right appurtenant to the respective Unit for the exclusive uses and purposes as set forth herein and may not be conveyed or transferred apart from the Unit. If there are minor variances between physical boundaries of the Limited Common Element and boundaries shown on a deed or in this Declaration, it shall be conclusively presumed that the physical boundaries are the correct boundaries. Except as otherwise provided herein, no other portion of the Common Elements shall be Limited Common Elements. Each Owner or group of Owners shall be responsible for maintaining the Limited Common Element designated for such Owner or group of Owners, except as otherwise may be provided by this Declaration. In the event a Common Expense is associated with the maintenance, repair or replacement of a Limited Common Element, those Common Expenses shall be assessed equally against the Units to which the Limited Common Element is assigned. Limited Common Elements may be established and designated by Declarant by amendments to the Plat, by dedications set forth in separate instruments recorded prior to the closing of the initial sale of any Lot or Unit affected by such dedication, or thereafter, Limited Common Elements may be reallocated or established only by the Association by amendment of the Plat, with the consent of the Unit Owners whose Units are affected, and if done in accordance with Section 38-33.3-208, C.R.S. The Limited Common Elements in the Project consist of the following:

(a) Garages/Parking Spaces/Walkways/Patios/Decks or Balconies: The garages, parking spaces, walkways, patios, decks or balconies which may be depicted in the recorded Plat and which are attached to any Lot or Unit but are outside and adjacent to a Lot are Limited Common Elements appurtenant to the Unit served by these Common Elements.

(b) Roof. The common roof of adjoining Units is a Limited Common Element appurtenant to the Units upon which such roof is constructed.

(c) Deck Expansion. Subject to the approval of the Architectural Committee and the Town of Breckenridge, should an Owner expand his second-story deck beyond the boundary of his Lot, causing the deck to extend into the Common Elements, the deck and the land beneath the deck shall become a part of the Limited Common Element appurtenant to his Unit. The Owner of that Unit shall be liable for any damage or injury in connection with the existence of the deck, shall



carry liability insurance therefor, and shall hold the Association and the other Owners harmless from any liability in connection with the deck and the Limited Common Element created therefor.

(d) Statutory Common Elements. Pursuant to Section 38-33.3-202.1(d), C.R.S., any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

Section 24. Lot. The term "Lot" shall mean and refer to each separate plot of land or parcel which is designated on the Plat of the Project with a number, which may have constructed on it a residence, and, title to which may be held in fee simple, either individually or in any form of concurrent ownership recognized in the State of Colorado. A "Lot" does not include the property designated on the Plat as a Common Element. Each Unit Owner owns the Lot beneath his Unit, the boundary lines of which are as depicted on the recorded Plat of the Project. Any contract of sale, deed, lease, deed of trust, mortgage, security interest, will or other instrument affecting a Lot may describe it by its number as shown on the Plat, followed by the name of the Project, and reference to the Plat and this Declaration. Each such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect a Lot or Unit and all appurtenant rights, benefits and burdens thereto as created by the provisions of this Declaration, and each such description shall be so construed.

Section 25. Managing Agent. The term "Managing Agent" shall mean and refer to a person or entity, who for compensation, or in expectation of compensation, exercises control over the assets of the Association. However, a "Managing Agent" does not include a full-time employee of the Association or a regulated financial institution operating within the normal course of its regulated business practice.

Section 26. Member. The term "Member" shall mean and refer to each person entitled to membership in the Association as provided in the Governing Documents.

Section 27. Mortgage. The term "Mortgage" shall mean and refer to any duly recorded and valid mortgage or deed of trust encumbering a Unit which represents a first security interest on or in one or more Lots or Units, but shall not include mortgages or deeds of trust junior to a first mortgage or first deed of trust or involuntary liens, such as mechanic's liens and judgment liens.

Section 28. Owner or Unit Owner. The term "Owner" or "Unit Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot or Unit within the Project, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall also include the Declarant, or its successors or assigns, with respect to all Lots or Units held in the name of Declarant.

Section 29. Party Walls. The term "Party Walls" shall mean and refer to those walls or fences built as a part of the original construction of the Units by Declarant and which are placed on

the dividing line between Units, including support and division walls, and floors and footings, between certain Units constructed on the Lots.

Section 30. Phase. The term "Phase" shall mean and refer to a construction phase of the Project where one or more Lots or parcels within the Project are approved for development and improved with Units to be offered for sale to the public. Construction Phase I of this Project consists of Lots 15 through 30 described in attached Exhibit "A," and the proposed Construction Phase II consists of Lots 1 through 14 described in attached Exhibit "A."

Section 31. Plat. The term "Plat" shall mean and refer to the subdivision plat map recorded \_\_\_\_\_, 1997, in the Office of the Clerk and Recorder for the County of Summit, State of Colorado, as Reception No. \_\_\_\_\_, and any amendments thereto, which plat map is identified as White Wolf Townhomes and which describes the Covered Property. The Plat sets forth the following: (i) the legal description of the surface of the land subject to this Declaration; (ii) the linear measurements and location, with reference to the exterior boundaries of the land of the public rights of way, of any easements, of the Lots and the Common Elements; (iii) the designation by number or other symbol of each Lot or Unit as designated on the Plat; and (iv) if any Lots or Units have horizontal unit boundaries, a plat, map or supplement to this Declaration, or any amendment to any of the foregoing, shall include a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of all Buildings containing or comprising the Lots or Units in a particular Phase of the Project or in the Project as a whole are substantially completed.

Section 32. Project. The term "Project" shall mean and refer to all of the Covered Property, including all of the Lots and Units thereon, the Common Elements and all Improvements located upon the Covered Property (i.e., the entire Common Interest Community).

Section 33. Town. The term "Town" shall mean and refer to the Town of Breckenridge, in the State of Colorado.

Section 34. Unit. The term "Unit" shall mean and refer to the physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from this Declaration and depicted on the Plat. The Unit consists of the residential improvements located upon a Lot, and a reference to "Unit" may also include the Lot upon which the Unit is built. The boundaries and identifying unit number of each Unit are depicted upon the Plat.

Section 35. White Wolf Townhomes Master Plan. The "White Wolf Townhomes Master Plan" or "Master Plan" shall mean and refer to the Plat and any accompanying documents filed for record in the Office of the County Clerk and Recorder for the County of Summit, State of Colorado, on the \_\_\_ day of \_\_\_\_\_, 1997, as Reception No. \_\_\_\_\_ and any subsequent amendments thereto.

## ARTICLE II

### CREATION OF COMMON INTEREST COMMUNITY

Section 1. Development of the Property/Type of Community. The development and improvement of the Covered Property, which shall be known as White Wolf Townhomes, shall be under the control of Declarant and shall be carried out according to the White Wolf Townhomes Master Plan and the Development Code of the Town of Breckenridge. Declarant intends to construct all improvements on Lots and as Units but may sell Lots without improvements or Units, provided, however, that, in such event, all improvements on Lots and as Units shall be constructed in accordance with the White Wolf Townhomes Master Plan. The type of Common Interest Community is a Condominium community consisting of townhomes located on individual Lots.

Section 2. Division of Project. Declarant, in order to establish the Project as a Common Interest Community, hereby divides the Project into the following:

(a) Thirty (30) designated and legally described Lots and Units thereon, which are described in attached Exhibit "A," and which are shown, defined and described on the recorded Plat for the Project.

(b) The Common Elements consisting of the remainder of the Project, excepting the Lots and Units as shown on said recorded Plat.

Section 3. Allocated Interests/Ownership of Common Elements. Acquisition of title to a fee interest in a Unit shall also include the appurtenant Allocated Interests (as defined in Article I, Section 3) and the right to use and enjoy all of the Common Elements within the Project, including non-exclusive rights of ingress, egress and support, if necessary, through the Common Elements. The Common Elements shall be owned by the Owners, each as to an undivided fractional interest, and each conveyance of a Unit, whether voluntary or involuntary, shall also convey the Allocated Interests, which shall include an undivided one-thirtieth (1/30) interest as tenant in common in the Common Elements, even though the conveyance document may omit reference to the Allocated Interests or interest in the Common Elements. Any conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of the Allocated Interests, including an undivided fractional interest in the Common Elements, is void unless the Unit to which that interest is allocated is also transferred.

Section 4. Project Overview. Declarant intends to develop the Project in two (2) construction Phases, with sixteen (16) Units consisting of Units 15 through 30 planned in the first Phase, and fourteen (14) Units consisting of Units 1 through 14 planned in the second Phase. There is no guarantee that all Phases will be completed or that the phasing will occur as planned. Declarant reserves the right to change its product size, type or design in the second Phase or any subsequent Phase which may become subject to this Declaration. Any such change contemplated shall provide for harmony of external design with existing structures in the Project and shall be consistent with the existing structures in quality of construction.

## ARTICLE III

### RIGHTS OF ENJOYMENT

Section 1. Members' Right of Enjoyment. Every Member of the Association shall have a right and nonexclusive easement for use and enjoyment of the Common Elements, including the right of ingress, egress, and support (if necessary) in, to, and throughout the Common Elements, including the right of pedestrian and vehicular access, ingress and egress over and across the driveway areas, as constructed, in order to provide unobstructed access to his Unit from the adjacent public street. All of such rights and easements shall be appurtenant to and pass with title to each Unit, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Element recreational facilities, if any;

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Elements and any recreational facilities thereon;

(c) The right of the Association, upon the vote or written assent of eighty percent (80%) of the Members, to borrow money for the purpose of improving the Common Elements and any Improvements thereon and (subject to the rights of Institutional Holders described in Article XIV and the requirements of Article VII, Section 2(g) of this Declaration) to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(d) Subject to the rights of Institutional Holders described in Article XIV, the right of the Association to dedicate, release, alienate, transfer or assign an interest in the Common Elements to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by eighty percent (80%) of the Members. No such dedication, release, alienation, transfer or assignment shall be effective, unless such action is taken upon the vote of at least eighty (80%) of the Members and effected in the manner described in Article VII, Section 2(g) of this Declaration.

(e) The rights and reservations of Declarant as set forth in this Declaration to discharge Declarant's obligations or exercise Declarant's special rights, including the right of Declarant, its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to market and sell Units until the close of escrow for the sale of all of the Units in the Project; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners, and further provided that such right of use will expire pursuant to the time limitation specified in Section 4 of Article XVI below;

(f) The right of the Association to suspend the rights and easements of use and enjoyment of the recreational facilities, if any, located on the Common Elements, of any Member, and the persons deriving such rights and easements from any Member, for any period during which the payment of any assessment against such Member and his Unit remains delinquent; and, after notice and hearing with an opportunity to be heard, to impose monetary penalties or suspend such use rights and easements for a reasonable period of time, not exceeding thirty (30) days, for any violation of the Governing Documents, it being understood that any suspension for either nonpayment of any assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments or comply with this Declaration.

(g) The right of the Association to levy a reasonable charge for the use of any recreational facilities located on the Common Elements;

(h) The right of the Association, acting through the Board, to grant concessions for snack bars and other commercial activities relating to the use and enjoyment of the Common Elements by the Members, provided that any such contract shall be subject to the restrictions on contracts described elsewhere in this Declaration and in the Bylaws.

(i) The right of the Association to close or limit the use of the Common Elements and easements while maintaining, improving, or making replacements therein or thereto.

Section 2. Delegation of Use. Any Member may delegate his right to the use and enjoyment of the Common Elements to the members of his family, his guests or tenants who reside in his Unit, subject to rules and regulations adopted by the Association.

Section 3. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, or release his Unit from the liens, charges and other provisions of the Governing Documents, by waiver of the use and enjoyment of the Common Elements or the abandonment of his Unit.

## ARTICLE IV

### USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the Project, each Unit and the Common Elements is subject to the following:

Section 1. Number of Units. The number of Units in the Project is thirty (30). The Declarant reserves no right to create additional units. The identification of each Unit is shown on the recorded Plat for the Project. The boundaries of each Unit are located as shown on the recorded Plat and are further described in Article I, Section 9 of this Declaration. Each Unit shall include the heating, hot water, and air conditioning apparatus exclusively serving the Unit, whether or not located within the boundaries of the Unit.

Section 2. Commercial Use. Subject to the Section entitled "Construction and Sales" of the Article hereof entitled "EASEMENTS," no Lot, Unit or any part thereof shall be used for any business, commercial, manufacturing, mercantile, storing, vending, or other nonresidential purposes; provided, however, that the Association shall have the right to provide or authorize such services on the Common Elements as it deems appropriate for the enjoyment of the Common Elements or for the benefit of the Members.

Section 3. Maintenance of Units. Each Owner shall be responsible for the maintenance and appearance of his Unit as set forth in Article VII, Section 4 (b) of this Declaration. Units shall be maintained in a neat, clean, orderly, safe, sanitary and attractive condition. The following conditions are prohibited within the Project: dilapidated, deteriorating or unrepaired structures, including fences, roofs, doors, walls and windows, scrap lumber, junk, trash or debris; abandoned, discarded or unused objects or equipment such as automobiles, auto parts, furniture, stoves, refrigerators, cans, containers and the like; stagnant water or excavations; and any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition or inappropriate location. All painting and alterations of the exterior surfaces of Units shall be undertaken in conformance with the requirements of Article XIII regarding Architectural Control. In the event that any Owner fails to maintain his Unit in accordance with the standards described in this Section, the Association shall have the right, but not the obligation, to undertake such maintenance and levy the expense thereof against the delinquent Owner as a Reimbursement Assessment.

Section 4. No Obstruction of Common Elements. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior written consent of the Board; provided, however, that personal property and fixtures consistent with the use of any Limited Common Element may be maintained by Owners upon such Limited Common Element, subject to such limitations as rules and regulations adopted by the Board may impose. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the prior written consent of the Board.

Section 5.     Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside any Unit or any portion of the Project without the approval of the Architectural Committee, except such signs as may be used by Declarant in connection with the development of the Project and sale of Units, subject to the time limitations set forth in Article XVI, Section 4, and such signs of customary and reasonable dimensions as prescribed by the Architectural Committee which may be displayed on or from a Unit, advertising it for sale or lease.

Section 6.     Animals. No insects or animals of any kind shall be raised, bred or kept on the Project except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained, for any commercial purpose, or in violation of any other provision of this Declaration and the rules and regulations of the Association. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal in the Project which constitutes, in the opinion of the Board, a nuisance to other Owners within the Project. Animals belonging to Owners or their licensees, tenants or invitees within the Project must be either kept within an enclosure, an enclosed yard or on a leash or bridle being held by a person capable of controlling the animal. Owners shall be liable to other Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner or by members of his family, his tenants or guests. It shall be the duty and responsibility of each Owner to clean up after his animals.

Section 7.     Utilities. Each Owner shall be obligated to pay any and all Assessments for sewage, electricity, other utilities, taxes and other charges assessed individually against his Unit.

Section 8.     Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or to its occupants. Such containers shall be exposed to the view of neighboring Units only when set out for a reasonable period of time (not to exceed twenty-four (24) hours) before and after scheduled trash collection hours. Residents shall initially arrange for trash collection service at their own expense. Should the Members vote at some later date that trash collection service be obtained for the Project as a whole, the cost for such service may be billed to the Association and charged to the Owners as a Common Expense.

Section 9.     Vehicles. No trailer, motor home, truck (except a pickup truck used for personal transportation), camper or boat shall be stored, kept, constructed, repaired or maintained anywhere on the Project (including any public or private street) in such a manner as to be visible from any other Unit within the Project. No inoperable vehicle shall be stored or allowed to remain in the Project (including any public or private street) in such a manner as to be visible from any other Unit within the Project.

Section 10.    Rules of Association. Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, decisions, rules and regulations of the Association

or its duly authorized representatives which may from time to time be promulgated. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, for injunctive relief, or for any other remedy permitted by law or by the terms of this Declaration.

Section 11. Conduct in Units and Common Element Areas. The Common Elements shall not be used for any purpose or in any manner which might cause it to be uninsurable against loss by fire or the perils covered under the property insurance policy carried by the Association, or cause any policy of insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof. No Unit shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Units or annoy them by unreasonable noises or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit or upon the Common Elements, including the Limited Common Elements.

Section 12. Leasing of Units. The terms of any rental or lease agreement shall be in accordance with and subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All occupancies of Units shall be subject to the right of the Association or the landlord to remove and/or evict the occupant for failure to comply with the terms of the Governing Documents.

Section 13. Antennas. No television, radio or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain within the Project unless it has been approved in writing by the Architectural Committee, or the Board, or unless it is fully contained within a Unit.

Section 14. Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminum foil or similar material.

Section 15. Restrictions on the Rights of Ownership of Units. There are no restrictions on the amount for which a Unit may be sold or on the amount that may be received by a Unit Owner on sale, condemnation, or casualty loss to the Unit. However, any amount received on the sale, condemnation, casualty loss of Common Elements, or termination of the Common Interest Community, shall be divided between the Unit Owners on the basis of each Unit Owner's Allocated Interest in the Project.



## ARTICLE V

### MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner shall automatically, upon becoming the Owner of a Lot or Unit subject to assessment, be a Member of the Association, and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall also automatically cease. For each Lot or Unit there shall be on file with the Association an address of record for the Owner, if different from the Lot or Unit address, and a phone number in case of emergency, all of which shall be kept current by the Owner. Ownership of a Lot or Unit shall be the sole qualification for membership in the Association; provided, however, that a Member's voting rights or privileges to use the Common Elements, or both, may be regulated or suspended as provided in the Governing Documents. All memberships shall be appurtenant to the Lot or Unit conveyed, and with the exception of Declarant, a person or entity shall be deemed an Owner of a Lot or Unit only upon recordation of a deed, contract of sale or other document conveying the Lot or Unit to him.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of his Lot or Unit, and then only to the transferee or Mortgage holder of the Lot or Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. Any conveyance, judicial sale, or other voluntary or involuntary transfer of a Lot or Unit also includes the Owner's membership interest in the Association. In the event an Owner fails or refuses to transfer the membership registered in his name to the transferee of his Lot or Unit, the Board may record the transfer upon the books of the Association. The Association may impose reasonable fees against the selling Owner for the actual costs of (a) transferring the selling Owner's membership on the books of the Association, and/or (b) providing documentation to the selling Owner as required in Article XIX, Section 10 of this Declaration.

Section 3. Voting Rights. Subject to Section 4 below and the specific provisions set forth in the Articles and Bylaws, the Association shall have one class of voting membership. Members shall be all Owners and shall be entitled to one vote for each Lot or Unit owned. When more than one person holds an interest in any Lot or Unit, all such persons shall be Members, provided, however, that there shall be no more than one vote cast, with no fractional votes, for or with respect to any Lot or Unit and such vote shall be cast as the persons owning the Lot or Unit shall determine. When Lots or Units are added to or withdrawn from the Common Interest Community, pursuant to the provisions of this Declaration or the Act, the formula set forth in Article I, Section 3 (b) of this Declaration, shall be used to reallocate voting.

Section 4. Declarant Control.

(a) Declarant reserves the power to appoint and remove officers and members of the Board so long as Declarant owns any Lot or Unit in the Project.

(b) During the period of Declarant Control, the Declarant's control shall be subject to the following limitations: (i) not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots or Units that may be created to Owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Members other than Declarant; (ii) not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots or Units that may be created to Owners other than the Declarant, not less than thirty-three and one-third percent (33 1/3%) if the members of the Board must be elected by Owners other than the Declarant.

(c) The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the period of Declarant Control, but, in that event, the Declarant may require, for the duration of the period of Declarant Control, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 5. Required Vote. No provision of this Declaration which requires the approval of a prescribed majority of the voting power of Members other than Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to the Units in the Project owned by Declarant. Notwithstanding anything to the contrary contained elsewhere in this Declaration, any action by the Association which must have the approval of the membership shall require the vote or written assent of the prescribed majority of all the Members.

Section 6. Vesting of Voting Rights. All voting rights which are attributable to a specific Lot or Unit shall not vest until such time as that Unit is subject to Regular Assessments (and Special Assessments, if any) pursuant to the terms of this Declaration.

Section 7. Suspension of Voting Rights. The Association may suspend the voting rights of any Owner for the period during which any assessment against an Owner's Lot or Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Covenant to Pay Assessments. Until the Association makes a Common Expense Assessment on any Lot or Unit in the Project, the Declarant shall pay all Common Expenses in the Project. Annual Assessments shall be paid in twelve equal monthly installments and shall be based on a budget adopted no less frequently than annually by the Association, subject to ratification by the Owners, as provided in Article VII, Section 7 of the Bylaws. Declarant, for each Lot or Unit owned within the Project, hereby covenants, and each Owner of any Lot or Unit, by acceptance of a conveyance therefor (whether or not it is expressed in such conveyance), is deemed to covenant and agree to pay Assessments to the Association; all such Assessments to be established and collected as hereinafter provided. Each of these Assessments, together with interest, late charges, costs of collection and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time the assessment became due. The personal obligation for delinquent Assessments shall not pass to such person's successors in interest unless expressly assumed by them.

#### Section 2. Assessments.

(a) The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Project and for the improvement, operation, maintenance and repair of the Common Elements and easements, and for the Association's improvement, maintenance and repair of those portions of the Project as set forth in this Declaration and to provide a reserve fund for future maintenance and repair, and for the performance of the duties of the Association as set forth in the Governing Documents. Except for Assessments under subsections (b), (c) and (d) of this Section, all Common Expenses shall be assessed against all the Units in accordance with the allocations set forth in Article I, Section 3 of this Declaration. Any past due Common Expense Assessment or installment thereof shall bear interest at the rate established by the Association not exceeding the maximum amount allowed by the Act from time to time (which maximum amount at the date of recordation of this Declaration is twenty-one percent (21%) per year).

(b) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element (such as roof maintenance, repair or replacement) shall be assessed against the Units to which that Limited Common Element is assigned, equally.

(c) The costs of insurance shall be assessed in proportion to risk, and the costs of utilities paid by the Association, if any, shall be assessed in proportion to usage.

(d) If any Common Expense is caused by the misconduct of any Unit Owner, the Association may assess that expense exclusively against such Owner's Unit as a Reimbursement Assessment.

(e) If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense liabilities.

(f) Each Unit Owner is liable for Assessments made against such Owner's Unit during the period of ownership of such Unit. No Unit Owner may be exempt from liability for payment of the Assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made.

### Section 3. Lien for Assessments.

(a) Annual Assessments shall apply only to Lots or Units now or hereafter subjected to this Declaration and included within the jurisdiction of the Association. The Association, if such Association is incorporated, has a statutory lien on any such Lot or Unit for any Assessment levied against that Lot or Unit or fines imposed against its Owner. Fees, charges, late charges, attorney fees, fines, and interest charged pursuant to Sections 1 and 2 of this Article are enforceable as Assessments under this Section, and any such Assessment shall be a charge upon the land and shall be a continuing lien in favor of the Association against the Lot or Unit against which such Assessment is made to the extent provided by the Act. The amount of the lien shall include all those items set forth in this Article from the time such items become due. Each monthly installment of annual Assessments is a lien from the time it becomes due, including the due date set by the Association for the acceleration of installment obligations.

(b) Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien is required. The foregoing notwithstanding, the Board shall record a lien against all Lots or Units owned by an Owner who fails to pay an assessment installment within sixty (60) days of its due date.

(c) A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of Assessments become due.

(d) This Section does not prohibit actions or suits to recover sums for which subsection (a) above creates a lien or to prohibit an Association from taking a deed in lieu of foreclosure.

(e) The Association shall be entitled to costs and reasonable attorney fees incurred by the Association in a judgment or decree of any action or suit brought by the Association under this Section.

Section 4. Priority of Liens. A lien under this Article is prior to all other liens and encumbrances on a Unit except:

(a) Liens and encumbrances recorded before the recordation of the Declaration;

(b) A security interest on the Unit which has priority over all other security interests on the Unit and which was recorded before the date on which the Assessment sought to be enforced became delinquent;

(c) Liens for real estate taxes and other governmental assessments or charges against the Unit;

(d) A lien under this Section is also prior to the security interests described in subsection (b) above to the following extent:

An amount equal to the Common Expense Assessments based on the annual budget adopted by the Association, which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(e) This Section 4 does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other Assessments made by the Association. A lien under this Section is not subject to the provisions of Part 2 of Article 41 of Title 38, C.R.S., or to the provisions of Section 15-11-201, C.R.S.)

Section 5. Appointment of Receiver. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver of the Unit Owner to collect all sums alleged to be due from the Unit Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Common Expense Assessments.

Section 6. Effect of Nonpayment of Assessments/Remedies of the Association Any Assessment or installment not paid within fifteen (15) days after the due date shall bear interest from the due date at the highest rate allowed by the Act, as may be further amended from time to time. In addition, the Board may establish by resolution a reasonable delinquent or late charge for any assessment not paid when due. In the event any assessment or installment is not paid within forty-five days after the due date, the Association, upon an affirmative vote by the Board, and after ten (10) days written notice to the Owner, which written notice shall be sent both via regular first class mail and by certified mail, return receipt requested, may terminate any utility or sanitary sewer service paid for by the Association which services the Unit, with the cost of such termination, as well as the cost of re-establishing service upon the payment of all past due Assessments, and may enter the Unit to perfect termination, to be an additional Assessment against the Unit. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the Association's lien against the Lot or Unit, or both. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Elements or abandonment of his Lot or Unit. In addition to any other remedies herein or by law provided, the lien herein established may be

foreclosed by an action in the Summit County District Court in the manner of foreclosure of common law mortgages, pursuant to the law and statutes of the State of Colorado, and subject to all the rights and duties therein provided, including redemption. In any civil action to enforce or recover unpaid Assessments, the prevailing party shall be entitled to an award of attorneys' fees and all costs of collection, enforcement and foreclosure.

Section 7. Statement re Unpaid Assessments. The Association, for a reasonable charge, shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot or Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request as provided in the Act, and is binding on the Association, the Board, and every Unit Owner, as of the date of its issuance.

Section 8. Surplus Funds. Unless otherwise provided in this Declaration, any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be paid to the Unit Owners in proportion to their Common Expense liabilities or credited to them to reduce their future Common Expense Assessments.

Section 9. Homestead. The lien of the Association for unpaid Assessments shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or federal law. The acceptance of a deed to any Lot or Unit subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 10. Working Capital. Each Owner, other than Declarant, shall be required to deposit, at close of escrow on its Unit, and maintain continuously with the Association an amount equal to six (6) times the amount of the monthly installments of the Annual Assessment, such reserve amount to be held without interest accruing to the Owner. This sum shall be used by the Association as a reserve for payment of each Owner's Assessments and for working capital of the Association. The advance payment shall not relieve an Owner from making the regular monthly installment payments of the annual Assessments, as they become due, nor shall the Association be required to deduct from such advance payment sums due for annual Assessments by an Owner prior to instituting any proceedings against the Owner for delinquent Assessments. In the event the Association shall, pursuant to the purposes of this Article, draw delinquent Assessments from the reserve created by such advance payment applicable to an Owner, the Owner expressly agrees, following ten (10) days prior written notice from the Association, to repay such amounts to the Association in order to properly maintain the reserve account, and such amount to be repaid shall have the same status as an Annual, Supplementary or Special assessment for purposes of this Article VI. Upon the sale of a Lot or Unit, an Owner shall be entitled to a credit for the remaining balance of such reserve account applicable to the Lot or Unit sold.

Section 11. Rate of Assessment. Assessments, other than Reimbursement Assessments, for each Unit shall be determined in accordance with the Allocated Interests of that Unit (each Unit shall be assessed for one-thirtieth (1/30th) of the Common Expenses). Reimbursement Assessments, costs for the repair and maintenance of Limited Common Elements and actual charges for any utility or other service provided to such Unit are specifically excluded from this calculation. No Assessment shall be attributed to a Lot or Unit until a Certificate of Occupancy has been issued for that Unit by the Town. When Lots or Units are added to or withdrawn from the Project, pursuant to the provisions of this Declaration and the Act, the formula set forth in Article I, Section 3 (b) above shall be used to reallocate Assessments.

Section 12. Date of Commencement of Annual Assessments/Due Dates. The annual Assessments provided for herein shall commence as to each Unit on the first day following the date of issuance of a Certificate of Occupancy for each such Unit. The Assessment due for the month in which such Assessment commences shall be prorated for the number of days remaining in such month. Written notice of the Assessment and its calculation shall be sent to every Owner.

Section 13. Subordination of the Lien to Mortgages. Except as provided herein, the lien for Assessments provided for herein shall be subordinate to the lien evidenced by a Mortgage of record. Sale or transfer of any Lot or Unit shall not affect the lien for said Assessments, except that sale or transfer of any Lot or Unit pursuant to foreclosure of any such Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such sale, transfer, foreclosure, or any proceeding in lieu of foreclosure, including a deed in lieu of foreclosure, shall relieve the Lot or Unit from liability for any assessment charges thereafter becoming due, not from the lien thereof. Nothing herein shall be deemed, in any manner, to release any Owner from the obligation to pay Assessments notwithstanding that the lien shall have been extinguished pursuant to the provisions of this Section, and all such obligations to pay Assessments shall be the personal obligation and liability of the Owner or prior Owner as the case may be.

## ARTICLE VII

### MANAGEMENT OF THE ASSOCIATION AND THE PROJECT

Section 1. General Powers of the Association. All powers relating to the management, operation and maintenance of the Project and of the Common Elements, shall be vested in the Association. The business affairs of the Common Interest Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat, its Articles and Bylaws, as amended from time to time, and any rules and regulations adopted by the Board. The specific and primary purposes and powers of the Association are to provide architectural control of, manage and maintain the Project and the Common Elements and to enforce the provisions of the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such powers of the Association. The Association may do any and all other acts and things which may be necessary, convenient or desirable in the administration of its affairs and in order to carry out the duties described in this Declaration or as permitted or set forth in the Act, including the following powers as set forth in Section 38-33.3-302, C.R.S., as that section may be amended from time to time:

- (a) Adopt and amend Bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments for Common Expenses from Unit Owners;
- (c) Hire and terminate Managing Agents and other employees, agents, and independent contractors;
- (d) 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 Common Interest Community;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements;
- (g) Cause additional Improvements to be made as a part of the Common Elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, subject to the following: The Common Elements may be conveyed or subjected to a security interest only pursuant to Section 38-33.3-312, C.R.S.
- (i) Grant easements, leases, licenses, and concessions through or over the Common Elements;



(j) Impose and receive any payments, fees, or charges for the use, rental or operation of the Common Elements other than Limited Common Elements;

(k) Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Governing Documents of the Association;

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

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

(n) Assign its right to future income, including the right to receive Common Expense Assessments, but only to the extent which may be provided in this Declaration;

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

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

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

Whenever this Declaration or the Bylaws require or permit the approval, consent or action of the Association, such approval, consent or action shall be that of the Board of Directors, unless otherwise provided by this Declaration or the Bylaws. The Association, through its Board of Directors, also shall have the authority to delegate its powers, by written resolution, to committees, Officers of the Association and its employees, including a manager or Managing Agent, provided no such delegation shall relieve the Board of final responsibility.

Section 2. General Duties of Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere described herein, and without limiting the generality thereof, and subject to the limitations set forth in this Declaration and the Act, the Association shall:

(a) Repair, replace and maintain and otherwise manage all of the Common Elements and all facilities, Improvements, and landscaping within the Common Elements, including the repair, maintenance and replacement of Limited Common Elements if required by this Declaration;

(b) Procure and maintain insurance on behalf of the Association, including, without limitation, general liability and property insurance on the Common Elements and the Lots and Units

as required by the terms of this Declaration. The Association shall also have the authority to procure and maintain any other type of insurance which the Association determines is in the best interest of the Association and its Members;

(c) Obtain, for the benefit of the Common Elements, all necessary water, gas, electric, refuse collection, and other utility services;

(d) Pay taxes and Assessments which are or could become a lien on the Common Elements, or some portion thereof (including delinquent taxes assessed to a Unit Owner should it be in the best interests of the Association, although the Association is not required to pay any delinquent taxes assessed to a Unit Owner as described in Article X of this Declaration);

(e) Prepare budgets and financial statements for the Association and its Members as prescribed in the Bylaws;

(f) Initiate and pursue disciplinary proceedings against Members for violations of provisions of the Governing Documents, in accordance with the procedures set forth in this Declaration;

(g) Subject to approval by at least eighty percent (80%) of the Members, including eighty percent (80%) of the votes allocated to Units not owned by Declarant, (a) borrow money and incur indebtedness, including encumbrance of the Common Elements, or (b) convey the Common Elements, if such borrowing or conveyance is for the purposes of the Association. Notwithstanding the above, if the Common Elements to be encumbered or conveyed are Limited Common Elements, all Owners of Units to which the Limited Common Elements are allocated must agree in order to encumber or convey that Limited Common Element. Proceeds of any such sale and conveyance of the Common Elements are an asset of the Association. An agreement to convey or encumber Common Elements must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of record Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in the Official Records of the County Recorder and is effective only upon recordation. The Association, on behalf of the Unit Owners, may contract to convey an interest in the Project pursuant to this subsection (g), but the contract is not enforceable against the Association until approved, executed, ratified and recorded pursuant to the requirements of this subsection (g). Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this subsection (g), any purported conveyance, encumbrance, judicial sale, or other transfer of Common Elements is void. A conveyance or encumbrance of Common Elements pursuant to this subsection (g) shall not deprive any Unit of its rights of ingress and egress of the Unit and support of the Unit. A conveyance or encumbrance of Common Elements pursuant to this subsection (g) does not affect the priority or validity of preexisting encumbrances.

(h) Obtain and cause to be maintained in force at all times a fidelity bond for any person handling funds of the Association, including, but not limited to, employees of the Managing Agent, if any.

Section 3. Budget. Within thirty (30) days after adoption of any proposed annual budget for the Association, the Board shall mail, by ordinary, first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Unit Owners must be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

Section 4. Maintenance of the Project.

(a) Maintenance of Common Elements and Other Areas by the Association. The Board shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities not specifically provided for in this Declaration. The Association is responsible for maintenance, repair, and replacement of the Common Elements (including, without limitation, repair, maintenance and replacement of certain Limited Common Elements as required herein, including roof and driveway maintenance and repair, snow removal from the driveways and walkways to the front door of each Unit, but not snow removal from roofs and decks). In addition, the Board or the Managing Agent shall attempt to notify each Owner of extreme weather conditions which may require immediate removal of snowload from decks and/or roofs, but shall not be responsible for any damage occurring from any failure to do so. Although each Owner shall be responsible for such snow removal from his deck and/or roof, he may request in writing that the Association arrange for same, either on an emergency basis or otherwise. Any such costs for snow removal from decks and/or roofs will be billed to that Owner as a Reimbursement Assessment, which shall be immediately payable upon receipt from the Association. Each Unit Owner shall afford to the Association and the other Unit Owners, and to their agents or employees, access through such Owner's Lot or Unit as reasonably necessary for those purposes. If damage is inflicted, or a strong likelihood that damage will be inflicted, on the Common Elements or any Unit through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair.

(b) Owner Maintenance. Owners are responsible for maintenance, repair and replacement of Units and all properties located within their Lot or Unit boundaries, except as otherwise provided in this Declaration. Given the extreme winters in the area of the Project, this maintenance by the Owner shall include shoveling snow from the roof and deck(s) of his Unit as required to prevent structural damage from built-up snow and ice dams based on the snowload of that winter season, and snow removal from any walks which do not connect the front of a Lot or Unit to the street or driveway (although arrangements may be made through the Association for snow removal from decks and roofs as set forth above). Each Owner shall be responsible for any damage to his Unit caused by his failure to remove or cause to be removed snow from his roof, deck or any

other area of responsibility. Each Lot and Unit, at all times, shall be kept well maintained, in good repair and replacement, and in a clean, sightly and wholesome condition. Colors used in repainting the Units shall be in conformance with architectural standards in effect pursuant to Article XIII of this Declaration. The Association, and its agents, shall have the authority but are not required to enter, replace, maintain, repair and clean up Lots or Units which do not conform to the maintenance requirements of this Declaration, and to charge and collect from the Owners thereof all reasonable costs related thereto as a Reimbursement Assessment.

(c) Maintenance of Public Improvements and Public Utilities. Maintenance, repair or replacement of any drainage structure or facilities, or other public improvements required by the local governmental entity as a condition of development of the Project or any part thereof shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Elements. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

(d) Maintenance of Real Estate Subject to Development Rights. In addition to the liability that the Declarant as a Unit Owner has under this Section, the Declarant alone is liable for all expenses in connection with real estate subject to Development Rights. No other Unit Owner and no other portion of the Common Interest Community is subject to a claim for payment of those expenses. Any income or proceeds from real estate subject to Development Rights inures to the Declarant. If the Declarant fails to pay all expenses in connection with real estate within the Common Interest Community subject to Development Rights, the Association may pay such expenses, and such expenses shall be assessed as a Common Expense against the real estate subject to Development Rights, and the Association may enforce the assessment pursuant to Section 38-33.3-316, C.R.S., by treating such real estate as if it were a Unit. If the Association acquires title to the real estate subject to Development Rights through foreclosure or otherwise, the Development Rights shall not be extinguished thereby, and, thereafter, the Association may succeed to any special declarant rights specified in a written instrument prepared, executed, and recorded by the Association in accordance with the requirements of Section 38-33.3-304(3), C.R.S.

(e) Landscaping. The Association shall provide landscaping and gardening services for all Common Elements and shall repair, replace and maintain all recreational facilities or other Improvements within the Common Elements in strict compliance with the landscaping requirements of the Town, as applicable. All grass, trees and ornamental vegetation shall be properly irrigated, trimmed and in all respects cared for in a manner so as to provide a well maintained appearance at all times. Any Improvements and recreational facilities located within the Common Elements shall be maintained in a neat, clean, orderly, safe, sanitary and attractive condition so as to be usable and enjoyable by all Members of the Association at all times.

(f) Driveway Maintenance and Snow Removal. The Association shall provide maintenance of the driveways, as constructed by Declarant and located in the Common Elements, which provide access from the adjacent street to the Units. Such maintenance shall include, without limitation, (a) periodic paving as required to maintain the driveways in a safe and hazard-free condition, and (b) snow removal as necessary to provide access to each Unit from the adjacent public street. Driveway maintenance and snow removal shall not include snow removal from or cleaning of decks or walks that do not connect the front of a Lot or Unit to the street or driveway. These excluded areas shall be the responsibility of each Owner.

(g) Tree Preservation and Preventive Forestry Action. The existing native specimen trees, important tree groups, and significant rock outcroppings, if any, within the Project shall be preserved to the greatest extent possible in accordance with local governmental rules and regulations and rules and regulations adopted from time to time by the Board. The Association shall take such steps as may be required by local fire regulations such as preventive forestry action and/or maintenance of fuel modification zones or firebreaks.

(h) Roof Maintenance. The Association shall maintain, repair and replace the Unit roofs which are Limited Common Elements appurtenant to the Units. This is the responsibility of the Association due to the fact that the adjoining Units have a common roof line and it is desirable that the roofs in the Project be compatible in condition and type and color of roofing materials used.

Section 5. Termination of Contracts and Leases by Declarant. The following contracts and leases, if entered into before the Board elected by the Unit Owners takes office, may be terminated without penalty by the Association, at any time after the Board elected by the Unit Owners takes office, upon not less than ninety (90) days' notice to the other party:

(a) Any management contract, employment contract, or lease of recreational or parking areas or facilities;

(b) Any other contract or lease between the Association and Declarant or an Affiliate of Declarant; or

(c) Any contract or lease that is not bona fide or was unconscionable to the Unit Owners at the time entered into under the circumstances then prevailing.

Section 6. Rights of Entry. The Association, through its agents or employees, shall have a limited right of entry into all Units for the purpose of inspecting the Project and taking whatever corrective action may, after approval by a majority vote of the Board, be deemed necessary or proper by the Board, consistent with the provisions of this Declaration. This right of entry shall include the right to enter a Unit for purposes of construction, maintenance or repair for the benefit of the Common Elements or the Owners in common.

Nothing in this Article shall in any manner limit the right of an Owner to the exclusive occupancy and control of his Unit. Entry into a Unit by the Association for other than emergency

repairs shall be made only after three (3) days notice has been given to the Owner, shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the party causing such damage. In the case of an emergency, the right of the Association to enter into a Unit shall be immediate; provided, however, that such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the party causing such damage. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or portion of a Unit to be maintained or repaired by the Owner thereof. The Association shall not be liable for failing to exercise this right of entry during an emergency or otherwise.

Section 7. Association Rules. The Association shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as a Reimbursement Assessment. The Association rules shall govern matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Elements; provided, however, that the Association rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of such rules shall be delivered to each Owner. The Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them. If the Association adopts a policy imposing any monetary penalty, including any fee, on any Member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first class mail, a schedule of the monetary penalties that may be assessed for those violations. If changes are made to the original schedule which was adopted and distributed to the Members, the Board shall distribute copies of the revised schedule to the Members by personal delivery or first class mail.

Section 8. Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Article VI, Section 7 of this Declaration, concerning statements of unpaid Assessments and such other records as set forth in the Bylaws. All financial records and other records shall be made reasonably available for examination by any Owner and such Owner's authorized agents.

Section 9. Association as Trustee. With respect to a third person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

## ARTICLE VIII

### INSURANCE

Section 1. Duty to Obtain Insurance; Types. Commencing on the first conveyance of a Unit to an Owner other than Declarant, the Association shall obtain and continue in effect, to the extent reasonably available, the following types and policies of insurance:

(a) Property insurance on the Common Elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, in an amount, if any, specified by the Governing Documents or otherwise deemed sufficient in the judgment of the Board (but not less than any amount specified in the Governing Documents), insuring the Board, the Association, the Managing Agent, if any, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and Board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(c) Property insurance of the type set forth in Section 1 (a) above on the Buildings and the Units contained therein. This insurance need not include the finished interior surfaces of the walls, floors, and ceilings of the Units, and need not include any improvements and betterments installed by Unit Owners, but if, for practical purposes, they are covered by agreement between the Owners and the Association, any increased charge shall be assessed by the Association to those Owners.

Section 2. Insurance Availability/Other Insurance. If the insurance described in Section 1 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by first class mail to all Unit Owners. The Association may carry any other insurance it considers appropriate to protect the Association or the Unit Owners.

Section 3. Insurance Provisions. Insurance policies carried pursuant to Section 1 above must provide that:

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

(b) The insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;

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

(d) If, at the time of loss under the policy, there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 1 (a) and 1 (c) above must be adjusted with the Association, and the insurance proceeds for that loss shall be payable to the Association as trustee and not to any holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association Unit Owners and lienholders as their interests may appear. Subject to the provisions of Article IX below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense as set forth in Article IX below.

Section 5. Claims Adjustment. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Unit Owner a pro rata share of any deductible paid by the Association.

Section 6. Individual Owners' Insurance. An insurance policy issued to the Association does not obviate the need for Unit Owners to obtain insurance for their own benefit such as contents coverage for their personal property, and Owners (a) may insure their personal property and obtain individual liability or other insurance as they see fit, and (b) shall insure their Units with the types of insurance and in at least the minimum amounts as may be required by their individual lenders.

Section 7. Certificates of Insurance/ Notice of Expiration Requirements. An insurer that has issued an insurance policy for the insurance described in Section 1 above shall issue certificates or memoranda of insurance to the Association, and, upon request, to any Unit Owner or holder of a security interest. All policies of insurance issued pursuant to Section 1 above shall contain a



provision that such policies shall not be canceled or terminated, or expire by their terms, without at least thirty (30) days' prior written notice to the Association and to each Unit Owner and holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Section 8. Waiver of Claims Against Association. As to each policy of insurance maintained by the Board, the Owners hereby waive and release all claims against the Association, the Board and Declarant, only to the extent of the insurance proceeds available to the Owners, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by said persons.

Section 9. Insurance Premiums. Premiums for any insurance obtained by the Association and other expenses connected with acquiring such insurance shall be a Common Expense to be included in the Assessments levied by the Association and collected from the Owners. The proportion of such Assessments necessary for the required insurance premiums and such other insurance expenses shall be used solely for the payment of premiums of required insurance as such premiums become due and for such other insurance expenses.

Section 10. Trustee for Policies. The Board shall be trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board as trustee. The Board shall have full power to receive and to receipt for the proceeds and to disburse such proceeds as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board shall have the authority to negotiate loss settlements with insurance carriers, with participation by Institutional Holders who so desire and have filed written requests under Section 7 of this Article. Any two (2) Officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

Section 11. Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to seventy-five percent (75%) of the Institutional Holders who have filed requests under Section 7 of this Article. Duplicate originals or certificates of all policies for property insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Institutional Holders who have requested the same in writing.

Section 12. Annual Insurance Review. The Board shall, upon issuance or renewal of insurance, but no less than annually, review the insurance carried by the Association for the purpose of determining the adequacy of the Association's insurance coverage, including, without limitation, the amount of the property insurance referred to in Sections 1 (a) and 1 (c) above, and the commercial general liability policy referred to in Section 1 (b) above.

The Board may, in its discretion, obtain a current appraisal of the full replacement value of any Buildings and Improvements within the Project for which it carries insurance, except for land, excavations, foundations, and other items normally excluded from property policies, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

Section 13. Fidelity Insurance.

(a) If any Unit Owner or employee of the Association controls or disburses funds of the Common Interest Community, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than two months' current Assessments plus reserves, as calculated from the current budget of the Association.

(b) Any person employed as an independent contractor by the Association for the purposes of managing the Common Interest Community must obtain and maintain fidelity insurance in an amount not less than the amount specified in subsection (a) above, unless the Association names such person as an insured employee in a contract of fidelity insurance, pursuant to subsection (a) above.

(c) The Association may carry fidelity insurance in amounts greater than required in subsection (a) above and may require any independent contractor employed for the purposes of managing the Common Interest Community to carry more fidelity insurance coverage than required in subsection (a) above.

## ARTICLE IX

### RECONSTRUCTION REQUIREMENTS

Any portion of the Project for which insurance is required under Article VIII which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Common Interest Community is terminated, in which case Article XIX, Section 7 ("Termination") applies;
- (b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;
- (c) Eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or
- (d) Prior to the conveyance of a Unit to a person other than the Declarant, the holder of a deed of trust or Mortgage on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements or Units must be used to restore the damaged area to a condition compatible with the remainder of the Project, and, except to the extent that other persons will be distributees, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Unit Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests appurtenant to the Units.

If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article XV of this Declaration, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

## ARTICLE X

### PROPERTY TAXES

Real property taxes, levies and assessments shall be separately and individually billed by the County Assessor's office to the Owners of individual Units on account of their interest in their Unit and the Common Elements. Payment of such taxes for Units shall be the sole responsibility of the Owner of such Unit. The Association shall not be liable for the collection and payment of any real or personal property taxes of any type whatsoever levied against individual Owners on account of their Units or their interest in the Common Elements.