**AMENDED AND RESTATED**
**DECLARATION**
**FOR**
**GOTHIC ROAD COMMUNITY**

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**AMENDED AND RESTATED**
**DECLARATION**
**FOR**
**GOTHIC ROAD COMMUNITY**

THIS AMENDED AND RESTATED DECLARATION FOR GOTHIC ROAD COMMUNITY (the "Declaration") dated [_____], 20[__], shall be effective upon recordation and is made by 9380 Real Estate, LLC, a Texas limited liability company ("Declarant"). Declarant is the owner of certain real property in Gunnison County, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

## ARTICLE 1 IMPOSITION OF COVENANTS

Section 1.1 Amend, Restate and Replace Existing Community Declaration. CB CC Development, LLC, a Florida limited liability company, recorded that certain Elevation Planned Community Declaration (as amended, the "Original Declaration") on November 8, 2007, at Reception No. 580128, as amended on November 19, 2007, at Reception No. 580385, in the Office of the Clerk and Recorder of Gunnison County, Colorado, encumbering the Property (the "Original Community"). 9380 Real Estate, LLC, a Texas limited liability company, the current Declarant, owns 100% of all Units and all other rights of ownership comprising the Original Community. In compliance with the Original Declaration, and with the consent of the sole Mortgagee (attached hereto), this Declaration amends, restates, replaces and supersedes in its entirety, the Original Declaration.

Section 1.2 Purpose. The purpose of this Declaration is to create a condominium project known as Gothic Road Community (the "Project") by amending and replacing the Original Declaration and submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time (the "Act"), to elect to have the Property treated as a common interest community and thereby subject the Project to the provisions of the Act and not to the general common law of tenancy-in-common, and to establish a uniform plan for the development, sale and ownership of Units.

Section 1.3 Intention of Declarant. Declarant desires to protect the value and desirability of the Project, to further a plan for the improvement, sale and ownership of the Units in the Project, to create a harmonious and attractive development and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners.

Section 1.4 Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be owned, held, sold, conveyed, encumbered, leased, rented, occupied, maintained and improved subject to the provisions of this Declaration.

Section 1.5 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as defined in ARTICLE 1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2 "Additional Improvements" has the meaning set forth in Section 15.1.

Section 2.3 "Additional Reserved Rights" has the meaning set forth in Section 14.1.

Section 2.4 "Agency" means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran's Affairs ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") that purchases, insures or guarantees residential mortgages.

Section 2.5 "Allocated Interests" means the undivided interest in the Common Elements and the Common Expense Liability and the votes in the Association allocated to each of the Units in the Project. The formulae used to establish the Allocated Interests are described in ARTICLE 4. The Allocated Interests for each Unit are set forth on Exhibit B attached hereto and incorporated herein by this reference.

Section 2.6 "Applicable Laws" has the meaning set forth in Section 3.5.

Section 2.7 "Area" means the total number of finished square feet of a Unit or Units, as determined by the Declarant, at the time of initial recording of this Declaration and in relation to amendments recorded by Declarant in the exercise of Development Rights, and by the Board in relation to any other amendment to this Declaration, in the sole and absolute discretion of each.

Section 2.8 "Articles of Incorporation" means the Articles of Incorporation of the Frontgate Avon Condominium Owners Association, Inc. filed with the Colorado Secretary of State, as amended from time to time.

Section 2.9 "Assessments" means the annual, special and Default Assessments levied pursuant to this Declaration.

Section 2.10 "Association" means the Gothic Road Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.11 "Board of Directors" or "Board" means the governing body of the Association, as provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association, and defined as the "executive board" in the Act.

Section 2.12 "Budget" means the annual budget of the projected revenues, expenditures (both ordinary and capital) and reserves for the Association.

Section 2.13 "Bylaws" means the bylaws adopted by the Association, as amended from time to time.

Section 2.14 "Class" has a meaning set forth in Section 7.8.

Section 2.15 "Club Unit" means any Unit designated as a "Club Unit" on the Map, or in the Exhibit B with a "Club" unit type, or as a Club Unit in this Declaration, as may be amended or supplemented from time to time.

Section 2.16 "Commercial Unit" means any Unit designated with the prefix "C" or otherwise designated as a Commercial Unit in the Declaration or on the Map for business or commercial uses. Without limiting the foregoing, for purposes of the Class designation, Commercial Units shall also include the Hotel Unit, Club Unit, and Workforce Housing Units.

Section 2.17 "Common Elements" means those portions of the Project, excluding the Units, and consisting of the General Common Elements and the Limited Common Elements. The Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the Common Elements as allocated pursuant to ARTICLE 4.

Section 2.18 "Common Expense Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.19 "Common Expenses" means the General Common Expenses and those other expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;

(b) expenses identified as Common Expenses by the provisions of this Declaration or the Bylaws;

(c) all sums lawfully assessed against the Units by the Board of Directors;

(d) expenses agreed upon as Common Expenses by the members of the Association; and

(e) expenses to be paid pursuant to any Management Agreement.

Section 2.20 "Condominium Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Map, and any Rules and Regulations, and any other Documents or provisions adopted under such documents by the Association or the Board of Directors.

Section 2.21 "Costs of Enforcement" means all monetary fees, late charges, interest, expenses, costs, including receiver's and appraiser's fees, collection agency fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

Section 2.22 "County" means the County of Gunnison, Colorado.

Section 2.23 "Declarant" means 9380 Real Estate, LLC, a Texas limited liability company, and its successors and assigns as the same may be specified in a recorded instrument specifically describing those rights of Declarant transferred to a successor or assignee.

Section 2.24 "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated that exercises a Development Right and is executed by Declarant and recorded in the Records. The term Declaration includes the Map, any certificate of completion (as defined in the Act) that is separate from the Map, and all amendments and supplements to this Declaration, the Map, and any separate certificate of completion without specific reference thereto.

Section 2.25 "Deed" means each initial deed recorded after the date hereof by which Declarant conveys a Unit and, after the initial sale by Declarant, any deed or other instrument by which an Owner transfers title to a Unit (expressly excluding an instrument creating a Security Interest).

Section 2.26 "Default Assessment" means an Assessment levied pursuant to this Declaration in connection with an unpaid amount for which an Owner is responsible including, without limitation, for Costs of Enforcement, overdue amounts charged by the Association to an Owner, liability for negligence and indemnification obligations.

Section 2.27 "Development Rights" means all of the expansion rights, withdrawal rights and development rights set forth in ARTICLE 15 of this Declaration, and in the Act.

Section 2.28 "Eligible First Mortgagee" means a First Mortgagee that has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive the notices provided for in ARTICLE 19 entitled "Mortgagee Protections."

Section 2.29 "Expansion Property" has the meaning set forth in Section 15.1

Section 2.30 "Fine" means a monetary penalty imposed by the Association against an Owner for violating terms, conditions, or provisions of the Condominium Documents. Interest on overdue amounts, late charges, other Costs of Enforcement and Default Assessments (other than any portion thereof which is designated as a Fine) are expressly excluded from the definition of, and shall not be deemed to be, Fines.

Section 2.31 "First Mortgagee" means a holder of a Security Interest in a Unit which has priority over all other Security Interests in the Unit.

Section 2.32 "General Common Elements or GCE" means those portions of the Project, other than the Units and the Limited Common Elements but including, without limiting the generality of the foregoing, the following components:

(a) The Property, except for the Improvements;

(b) the mechanical and utility installations, lines and systems consisting of the equipment and materials making up any central services which exist for use by all of the Unit Owners such as water retention and drainage systems, and other similar systems, lines and installations, including the pipes, inlet structures, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith;

(c) the public sidewalks, walkways, paths, grass, shrubbery, trees, planters, landscaping, retaining walls, boulder walls, irrigation and related facilities that are not within Limited Common Elements;

(d) the areas designated on the Map, that are not Units, not within Units, nor within Limited Common Elements, including without limitation the staircase and storm sewer improvement encroachments, as shown on the Map; and

(e) in general, all other parts of the Project designated by Declarant as General Common Elements and existing for the use of all of the Owners as shown on the Map, including, without limitation, emergency vehicle access to and from public streets.

The General Common Elements shall be owned by the Owners, each Unit being allocated an undivided interest in the General Common Elements as allocated pursuant to ARTICLE 4.

Section 2.33 "General Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association not included as a Limited Common Expense but pertaining to the General Common Elements, together with any allocations to reserves for the General Common Elements, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair or replacement of the General Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as provided in this Declaration;

(b) expenses identified as General Common Expenses by the provisions of this Declaration or the Bylaws;

(c) expenses agreed upon as General Common Expenses by the members of the Association; and

(d) expenses to be paid pursuant to any Management Agreement applicable solely to the General Common Elements.

Section 2.34 "Hotel Amenities Access Agreement" means, individually and collectively, that certain: Hotel Amenities Access Agreement, as amended from time to time, which creates certain shared access, maintenance, cost-sharing and other obligations, related to certain amenities within the Project, initially including fitness facilities, outdoor hot tubs, sauna and family game room, among the Association, the Club Unit Owner, and the Hotel Unit Owner.

Section 2.35 "Hotel Unit" means the Unit(s) identified as a "Hotel Unit" on the Map and in the Exhibit B with the prefix "H" or designated as a Hotel Unit in this Declaration. References to Units shall include the Hotel Unit(s) unless the context would prohibit or unless this Declaration expressly provides otherwise.

Section 2.36 "Hotel Unit Owner" means any Owner of the Hotel Unit(s) identified on the Map and in the Exhibit B with a "H" unit type as a Hotel Unit, or, alternatively, a "Hotel Operator" that is licensed or authorized by a franchise, license or other agreement with a hotel management or franchise company to operate all of the Hotel Unit(s) under a brand name or hotel "flag" or a hotel management company engaged by the Hotel Unit Owner, as applicable.

Section 2.37 "Hotel Standards" means the systems, standards and policies, which apply to all of the Hotel Unit(s) and which the Hotel Unit Owner and Hotel Operator, if any, are required to uphold and enforce in order to comply with its own or its licensor's branding and operating standards, including, but not limited to, standards of upkeep and maintenance for all Units, Common Elements, recreational facilities, improvements and interior or exterior landscaping. Provisions of this Declaration that impose or refer to the

Hotel Standards may only be amended or modified with the prior, written consent of the Hotel Unit Owner, and, during the Declarant Control Period, the Declarant. Notwithstanding the foregoing, provisions of this Declaration that impose or refer to Hotel Standards applicable to all Hotel Unit(s) may only be enforced by the Hotel Unit Owner when operating pursuant to a franchise, license or other agreement with the Hotel Operator, with the Declarant or with another hotel management or franchise company agreeing to operate the Hotel under a brand name or hotel "flag". So long as the Hotel is in operation, a copy of the Project-specific Hotel Standards shall be made available to the Association by the Hotel Operator upon request.

Section 2.38 "Improvement(s)" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located, together with landscaping and hardscaping located on the Property.

Section 2.39 "Limited Common Elements or LCE" means those parts of the Common Elements that are limited to and reserved for use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, entryways, stoops, porch, balcony or patio designated or designed to serve a single Unit but located outside the Unit's boundaries, including, but not limited to, Parking LCE – Residential, Parking LCE – Commercial, Hotel LCE, Club LCE, as designated as "Limited Common Elements" or "LCE" in this Declaration or on the Map, if any. If any chute, flue, duct, wire, conduit, pipe, line, installation, system, bearing wall, bearing column, girder, beam, slab, foundation, footer or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof outside of the Unit but serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Limited Common Elements allocated solely to the benefitted Units. The mechanical and utility installations for central service of power, light, gas, water, sanitary sewer, plumbing, fire control, and other similar systems, lines and installations which exist for use by a separate Unit or Units, or by Limited Common Elements serving such Unit(s) (including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith) are Limited Common Elements appurtenant to the benefitted Units. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Map as Limited Common Elements.

Specific Limited Common Elements have been designated on the Map, including the Parking LCE – Residential, Parking LCE – Commercial, Hotel LCE, Club LCE, as defined above. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Owners, except by invitation and except as otherwise set forth in ARTICLE 13. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.40 "Majority of Owners" means a majority of the Total Voting Power (rather than a majority of those present or voting by proxy at a meeting or the majority of a quorum). Votes allocated to any Units owned by the Association may not be cast and shall not be included in any calculation of voting power.

Section 2.41 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Directors relative to the operation, maintenance, and management of the Project.

Section 2.42 "Managing Agent" means a person, firm, corporation or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.43 "Map" means that part of this Declaration that depicts all or any portion of the Project in three dimensions, is executed by Declarant and is recorded in the Records. The Map shall also be a land survey plat as set forth in Section 38-51-106, Colorado Revised Statutes. In a Map, a "Horizontal Boundary" means a plane of elevation relative to a described benchmark that defines either a lower or upper dimension of a Unit such that the real estate respectively below or above the defined plane is not part of the subject Unit. In a Map, a "Vertical Boundary" means the defined limit of a Unit that is not a Horizontal Boundary of that Unit.

Section 2.44 "Nonprofit Act" means the Colorado Revised Nonprofit Corporation Act, Articles 121-137, Title 7, Colorado Revise Statutes, as may be amended and supplemented from time to time.

Section 2.45 "Occupant" means any member of an Owner's family or an Owner's guests, invitees, Hotel guests, servants, rental tenants, commercial tenants, employees, or licensees who occupy a Unit, including the Hotel Unit(s), or are on the Common Elements for any period of time.

Section 2.46 "Owner" means Declarant or any other Person who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any Person having a Security Interest in a Unit unless such Person has acquired record title to the Unit pursuant to foreclosure or other proceedings or by conveyance in lieu of foreclosure.

Section 2.47 "Parking LCE – Commercial" means those Limited Common Elements within the Project parking areas limited to and reserved for the use of the Commercial Units, as designated on the Map as "Parking LCE – Commercial".

Section 2.48 "Parking LCE - Residential" means those Limited Common Elements within the Project parking areas limited to and reserved for the use of the Residential Units, as designated on the Map as "Parking LCE – Residential".

Section 2.49 "Period of Declarant Control" means the maximum period of time defined and limited by the Act and Section 7.5 of this Declaration during which Declarant may, at its option, control the Association.

Section 2.50 "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision or other legal entity or any combination thereof.

Section 2.51 "Project" has the meaning set forth in Section 1.2 hereof.

Section 2.52 "Property" means the real property described in the attached Exhibit A.

Section 2.53 "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.54 "Records" means the Office of the Clerk and Recorder in every county in which any portion of the Project is located.

Section 2.55 "Reserved Declarant Rights" means all rights reserved by Declarant in this Declaration, including, without limiting the generality of the foregoing, those rights reserved to Declarant in ARTICLE 14 and ARTICLE 15 hereof.

Section 2.56 "Residential Unit" means any of those Units designated as a Residential Unit (or "R Unit") in the Declaration or on the Map, as amended or supplemented from time to time.

Section 2.57 "Rules and Regulations" means the rules and regulations promulgated by the Association for the management, preservation, safety, control, and orderly operation of the Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time. Without limiting the generality of the foregoing, the phrase Rules and Regulations as used in the Condominium Documents shall not be limited to the provisions of the document(s) entitled Rules and Regulations but instead shall include all policies, procedures, rules, regulations, and/or guidelines as the same may be adopted or amended from time to time by the Board of Directors and shall expressly include, without limitation, any responsible governance policies, and/or any architectural control guidelines. Separate Rules and Regulations may be promulgated to apply to the Residential Units, Commercial Units, and Workforce Housing Units.

Section 2.58 "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of the obligation secured by a Security Interest.

Section 2.59 "Special Declarant Rights" has the meaning set forth in Section 14.1 hereof.

Section 2.60 "Total Voting Power" means the aggregate number of votes of the members of the Association or a Class, as applicable, that are eligible and entitled to vote on or consent to or reject the decision or action in question.

Section 2.61 "Town of Mt. Crested Butte" means the Town of Mt. Crested Butte, Colorado, a Colorado home rule municipality.

Section 2.62 "Unit" means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration and depicted on the Map. A Unit need not be enclosed by walls, but in the event a Unit consists of enclosed rooms, and such Unit shall be bounded by the interior surfaces of Unfinished Perimeter Walls, Unfinished Floors and Unfinished Ceilings thereof.

(a) "Unfinished Perimeter Wall" means the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of a Unit.

(b) "Unfinished Ceiling" means the beams, joists, and wooden, metal or other structural materials which constitute the ceiling of a Unit.

(c) "Unfinished Floor" means the beams, floor joists, and floor deck material which constitute the floor of a Unit.

A Unit that is enclosed by walls shall include any lath, furring, wallboard, plasterboard, plaster, drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, any fireplace or stove hearth, facing brick, tile or firebox, fixtures and hardware, all improvements contained within the area bounded by the Unfinished Perimeter Walls, Unfinished Ceilings, and Unfinished Floors, and any heating and refrigerating elements or related equipment, utility lines and outlets, telecommunications lines,

electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, communications, or other utility services solely to such Unit and located within the Unfinished Perimeter Walls, Unfinished Ceilings, and Unfinished Floors; provided, however, that such Unit shall not include any of the structural components of the Improvements or any elements, equipment, lines, pipes, fixtures or equipment which are located within such Unit but which serve Common Elements or more than one Unit.

Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Project as more specifically set forth on Exhibit B.

Section 2.63 "Withdrawn Property" has the meaning set forth in Section 15.8.

Section 2.64 "Workforce Housing Unit" means each of the Units initially designated as a Workforce Housing Unit (or as "WH Unit") in the Declaration or on the Map, as may be amended or supplemented from time to time. Each WH Unit shall be subject to restrictions set forth in Applicable Laws.

## ARTICLE 3 . DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division Into Units. The Property is hereby and hereafter divided into those Units identified on Exhibit B, as amended from time to time. The undivided interests in the Common Elements, as allocated in Exhibit B, are hereby declared to be appurtenant to the respective Units.

Section 3.2 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

Section 3.3 Inseparability of Unit. Except as provided in Section 3.5 below, and in the Article entitled "Reservation of Development Rights": (a) no part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Unit and its appurtenances shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with the undivided interests in the Common Elements and all appurtenant rights and interests created by Applicable Law or by this Declaration, including the Owner's membership in the Association. Notwithstanding the foregoing provisions of this Section, nothing herein shall prevent or limit Declarant's exercise of, enjoyment of, or ability to exercise any Reserved Declarant Rights.

Section 3.4 Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a Deed or other instrument of conveyance or assignment to a Unit, each Owner shall be deemed to have specifically waived such Owner's right, if any, to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. In addition to all other remedies of the Association, any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action. Notwithstanding anything to the contrary set forth herein, nothing in this Section shall limit Declarant's exercise of, enjoyment of, or ability to exercise any Reserved Declarant Rights.

Section 3.5 Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Except as expressly otherwise set forth herein in connection with the Reserved Declarant Rights, Owner(s) may

only subdivide their Units, relocate boundaries between their Unit and an adjoining Unit, and/or reallocate Limited Common Elements between or among Units after obtaining the prior approval of the Board of Directors pursuant to the Rules and Regulations and the consent of all Owners and Eligible First Mortgagees of the Units affected by such change. Any such approved change shall also be subject to the applicable provisions and requirements of this Declaration and of the Act and any other law, ordinance, regulation, or requirement of any governmental authority having jurisdiction over the Units or the Project, including, without limitation, the Town of Mt. Crested Butte zoning ordinances and resolutions ("Applicable Laws"). Owners shall be responsible for ensuring that all alterations comply with all Applicable Laws and the Condominium Documents and that all necessary approvals are obtained from governmental authorities and other third parties. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith.

## ARTICLE 4 ALLOCATED INTERESTS

Section 4.1 Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulae set out in Section 4.2 below. These formulae are to be used in reallocating interests if Units are added to the Project, if Units are converted to a different type of Unit or if Units are converted to Common Elements or Limited Common Elements.

Section 4.2 Formulae for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulae and are shown on Exhibit B.

(a) Undivided Interest in the General Common Elements. The percentage of the undivided interest in the General Common Elements shall be allocated among all Units based on a formula dividing the Area of each Unit by the sum of the Area of all Units, as set forth in Exhibit B.

(b) General Common Expense Liability. The percentage of General Common Expense Liability shall be allocated among all Units in the same manner as the percentage of the undivided interest in the General Common Elements (i.e. based on a formula dividing the Area of each Unit by the sum of the Area of all Units), as set forth in Exhibit B. Allocations for General Common Expense Liability may be further adjusted as set forth in Section 9.3 of this Declaration.

(c) Parking LCE Expense Liability. The Common Expense Liability between the Parking LCE – Residential and Parking LCE – Commercial shall be based, initially, on the number of parking spaces in each Parking LCE area. The resulting Common Expense Liability attributable to each Parking LCE shall be allocated: (i) among the Residential Units (for the Parking LCE – Residential area), based on a formula dividing the Area of each Residential Unit by the sum of the Area of all Residential Units, and (ii) among the Commercial Units (for the Parking LCE – Residential area), based on a formula dividing the Area of each Commercial Unit by the sum of the Area of all Commercial Units; in both cases as set forth in Exhibit B.[1] Allocations for specific Limited Common Expense Liability may be further adjusted as set forth in Section 9.3 of this Declaration.

[1] NTD – Parking expense allocations open.

(d) Votes. Each Unit shall be allocated a vote in the same manner as the percentage of the undivided interest in the General Common Elements (i.e. based on a formula dividing the Area of each Unit by the sum of the Area of all Units), as set forth in Exhibit B.

Section 4.3 Rounding Convention. The total of all Allocated Interests shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

Section 4.4 Effective Date of Reallocation. The effective date for reallocating Allocated Interests to Units as a result of the exercise of Development Rights set forth in ARTICLE 15 of this Declaration shall be the date on which the amendment required by Section 15.3 hereof is recorded in the Records.

## ARTICLE 5 CONDOMINIUM MAP

The Map shall be filed in the Records. Any Map filed subsequent to the initial Map shall be termed a supplement to the initial Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall satisfy the provisions of Section 38-33.3-209 of the Act and of Section 38-51-106, Colorado Revised Statues.

The Map shall contain a certificate of a registered and licensed land surveyor certifying that the Map was (a) prepared subsequent to the substantial completion of the Improvements and (b) contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries; provided, however, that any variation in actual as-built square footage for a Unit shall have no effect on the Allocated Interests, as described herein.

## ARTICLE 6 LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1 Contracts to Convey Entered into Prior to Recording of Condominium Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this ARTICLE 6 and may indicate that this Declaration and the Map are to be recorded.

Section 6.2 Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of this Declaration and the Map, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

> [R] [WH] [C] [Hotel] [Club] Unit _____, according to the Amended and Restated Declaration for Gothic Road Community, recorded _____, 20[__], at (Reception No. _____), as amended from time to time, and the Condominium Map for Gothic Road Community, recorded _____, 20__, at (Reception No. _____), as supplemented from time to time, in the office of the Clerk and Recorder of Gunnison County, Colorado.

Section 6.3 Conveyance Deemed to Include an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which

legally describes the Unit substantially in the manner set forth above shall be construed to include the Unit, together with the undivided interest in the Common Elements appurtenant to such Unit, as allocated on Exhibit B, and together with all fixtures and improvements contained in such Unit, and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Condominium Documents, including the easement of enjoyment to use the Common Elements.

Section 6.4 Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit, including, without limitation, the Common Elements appurtenant to any other Unit.

## ARTICLE 7 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 7.1 Association Membership. The Articles of Incorporation shall be filed no later than the date Declarant delivers the first Deed conveying a Unit in the Project. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more Persons, shall have more than one membership per Unit owned, but all of the Persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one Person, such Persons shall appoint and authorize one Person or alternate Persons to represent the Owners of the Unit pursuant to the Bylaws, and there shall be a single registered address for each Unit, as applicable, for notice and delivery purposes as further set forth in the Bylaws.

Section 7.2 Voting Rights and Meetings. Each Unit in the Project shall have the votes allocated in accordance with Section 4.2; provided, however, no vote allocated to a Unit owned by the Association may be cast. Cumulative voting shall not be allowed in the election of the Board of Directors or for any other purpose. The voting power required for any action or determination shall be calculated in accordance with the Bylaws. A meeting of the Association shall be held at least once each year, and special meetings of the Association may be called in accordance with the Bylaws.

Section 7.3 Meeting to Approve Annual Budget. Prior to the first annual meeting of the Association, and thereafter at the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to review the Budget proposed by the Board of Directors, which shall include any Class directed line items described in Section 7.8 for the Association's next fiscal year. A summary of the proposed Budget approved by the Board of Directors shall be delivered to the Owners within ninety (90) days after its approval by the Board of Directors along with a notice of a meeting of the Association to be held not fewer than ten (10) nor more than fifty (50) days after delivery of the summary to the Owners. Unless at the meeting at least sixty-seven percent (67%) of the Total Voting Power reject the proposed Budget, such Budget shall be deemed ratified whether or not a quorum is present at the meeting. In the event the proposed Budget is rejected, the then existing Budget shall continue in effect until such time as a subsequent Budget is proposed by the Board of Directors and is not rejected in accordance with the above procedures.

Section 7.4 Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide written notice of the transfer, together with all information required under the Bylaws and/or the Rules and Regulations, to the Association within ten (10) days after the date of transfer. Such Person

shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 7.5 Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which Declarant, or Persons designated by Declarant, may appoint and remove the officers of the Association and the members of the Board of Directors. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation and shall terminate no later than the earlier of:

(a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than a Declarant;

(b) two (2) years after Declarant's last conveyance of a Unit in the ordinary course of business; or

(c) two (2) years after any right to add new Units was last exercised.

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

Section 7.6 Required Election of Owners. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created by Declarant to Owners other than Declarant, at least one (1) member and not fewer than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created by Declarant to Owners other than Declarant, not fewer than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than Declarant. For the avoidance of doubt, the foregoing restrictions on Declarant are not intended to restrict the Declarant, to the extent it then owns one or more Units, from voting or from running for the Board of Directors as a Unit Owner. Not later than the termination of the Period of Declarant Control, the Owners shall elect all members of the Board of Directors, at least a majority of whom shall be Owners other than Declarant or Designated Representatives of Owners other than Declarant. In order to assure representation of each Class in the affairs of the Association and to protect the valid interests of the Owners within each Class in the operation of the Project following the termination of the Period of Declarant Control, from and after such date: the Residential Owners, voting as a Class, shall be entitled to elect two members of the Board of Directors; the Commercial Owners, voting as a Class, shall be entitled to elect two members of the Board of Directors; and all Owners shall be entitled to elect one "at-large" member of the Board of Directors.

The Board of Directors shall elect the officers. The members of the Board of Directors and officers shall take office upon election. Each member of the Board of Directors shall serve for the term specified in the Bylaws and may be removed only in accordance with the Bylaws.

Section 7.7 Requirements for Turnover of Declarant Control. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board of Directors, Declarant shall deliver to the Association (a) all property of the Owners and of the Association held by or controlled by Declarant, and (b) the documents, information, funds and other items required by Section 38-33.3-303(9) of the Act, as further specified in the Bylaws (to the extent they are in Declarant's possession or control).

Section 7.8 Class Voting. Owners of Residential Units and the Owners of the Commercial Units shall each make up a separate class of voting members in the Association (each, a "Class") for purposes of voting on certain issues as described on Exhibit D. All Class issues shall be voted upon or otherwise acted upon by the Owners in the applicable Class at a regular or special meeting of the Association or at such other special meeting of the Class as may be called. For purposes of any such meeting of the Class, the Association shall distribute to the Owners within the applicable Class such notices of the meeting and other information required to be delivered to Owners by the Association for a meeting of the Association as provided in the Bylaws. To the extent not expressly fitting within a category specified in Exhibit D, the decision on whether an issue relates solely to a particular Class or otherwise fits within the categories of the Class issues described in this Declaration shall be determined in the reasonable discretion of the Board of Directors based on the provisions of the Condominium Documents.

Notwithstanding anything to the contrary set forth herein, the Board shall not be required to take any action that would cause a breach of any legal duty of the Board or that would result in a violation of the Act or the Applicable Laws.

Section 7.9 Reserved Powers: Directions to Board of Directors. Notwithstanding anything to the contrary set forth in this Declaration, no issue, action or decision which would operate to discriminate against any Class or otherwise unreasonably interfere with the operation of the Units owned by the Class as otherwise permitted under the Condominium Documents, shall be effective without a vote or agreement of at least sixty-seven percent (67%) of the Total Voting Power of the Class.

## ARTICLE 8 ASSOCIATION POWERS AND DUTIES

Section 8.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements, including the maintenance, repair and replacement of the Limited Common Elements, other than routine maintenance and repair for which the Owners are responsible pursuant to Section 10. The Association shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be maintained, repaired and/or replaced on a periodic basis. The Association shall adopt and amend, annually and in accordance with the provisions hereof, a Budget which will be the basis for collection of Assessments from Owners. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the requirement to provide statements of status of Assessments, as described in Section 9.12. All financial and other records of the Association shall be made reasonably available for examination by any Owner and such Owner's authorized agents and requesting First Mortgagees, all in accordance with the Condominium Documents.

Section 8.2 Association Powers. The Association shall have, subject to the limitations contained in this Declaration, the Bylaws, and the Act, all powers necessary or appropriate for the administration of the affairs of the Association and the upkeep of the Project, which shall include, but not be limited to, the following:

(a) Adopt and amend the Bylaws and the Rules and Regulations;

(b) Adopt and amend the Budget;

(c) Collect Assessments from Owners;

(d) Suspend the voting interests allocated to a Unit, and the right of an Owner to cast such votes, or by proxy the votes of another, during any period in which such Owner is in default in the payment of any Assessment, or during any time in which an Owner is in violation of any other provision of the Condominium Documents;

(e) Hire and discharge Managing Agents and delegate to such Managing Agents the power and duty to enforce the Rules and Regulations and other powers and duties of the Association, subject to the requirements of the Act;

(f) Hire and discharge employees, independent contractors and agents other than Managing Agents;

(g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Condominium Documents in the Association's name, on behalf of the Association or on behalf of two or more Owners in matters affecting the Project;

(h) Adjust and settle insurance claims;

(i) Receive notices, join in any litigation or administrative proceeding, and execute any and all documents in the Association's name, on behalf of the Association, or on behalf of the two or more Owners, in connection with any change in zoning, annexation, subdivision approval, building permit, or other type of governmental approval required to accomplish or maintain the purposes of the Association;

(j) Make contracts and incur liabilities;

(k) Regulate the use, maintenance, repair, replacement, and modification of all Common Elements (other than those Limited Common Elements required to be maintained and repaired by Owners as provided herein), all Association property within the Project or any property which serves the Project but which is outside its boundaries;

(l) Establish policies and procedures for entry into Units under authority granted to the Association in the Condominium Documents for the purpose of cleaning, maintenance and repair (including emergency repair) and for the purpose of responding to, investigating or abating any known or suspected nuisance, dangerous or unlawful activity, emergency or of same and taking such action as the Association may deem necessary or appropriate under the circumstances;

(m) Cause additional improvements to be made as a part of the Common Elements;

(n) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property (provided that Common Elements may be conveyed or subjected to a Security Interest only pursuant to Section 38-33.3-312 of the Act);

(o) Grant easements, including permanent easements and grant leases, licenses and concessions, through or over the Common Elements (other than Limited Common Elements appurtenant to a Unit or to a Class of Units, without the consent of such Unit Owner or applicable Class);

(p) Impose and receive a payment, fee, or charge for (i) services provided to Owners, and (ii) for the use, rental or operation of the Common Elements (other than for the use or rental of the Limited Common Elements appurtenant to a Unit or to a Class of Units, without the consent of such Unit Owner or applicable Class serving a single Unit);

(q) Establish from time to time, and thereafter impose, charges for late payment of Assessments or any other sums due and, after notice and hearing, levy a Fine for a violation of the Condominium Documents;

(r) Impose a reasonable charge for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments and for services provided to Owners;

(s) Recover Costs of Enforcement for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated;

(t) Provide for the indemnification of the Association's officers and the Board of Directors to the extent permitted by law and maintain directors' and officers' liability insurance;

(u) Assign the Association's right to future income, including the right to receive Assessments;

(v) Except with respect to members of the Board of Directors appointed by Declarant during the Period of Declarant Control (who may be removed only by Declarant), declare the office of a member of the Board of Directors to be vacant in the event such member is absent from three (3) regular meetings of the Board of Directors during any one year period;

(w) Appoint any committee as required or permitted by the Condominium Documents, and by resolution, establish committees, permanent and standing, to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee;

(x) Create one or more subassociations to govern particular types of Units;

(y) By resolution, set forth policies and procedures which provide for corporate actions and powers which are different than those set forth in the Nonprofit Act, which are permitted to be "otherwise set forth in the Bylaws." Such resolutions shall be given the same force and effect as if specifically enumerated in the Declaration or the Bylaws;

(z) Exercise any other powers conferred by the Condominium Documents, the Act, or the Nonprofit Act or that may otherwise be exercised by entities of the same type as the Association under Colorado law; and

(aa) Exercise any other power necessary or proper for the governance and operation of the Association.

Section 8.3 Actions by Board of Directors. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act with respect to powers reserved to the Owners and the Classes, the Board of Directors may act in all instances on behalf of the Association. Notwithstanding anything to the contrary contained herein, those matters that constitute Class issues as described in Exhibit D are subject to the exclusive jurisdiction of the applicable Classes and the Board of Directors shall have no power or authority

to act in contravention or frustration of any action properly taken by a Class with respect to a Class issue and shall, instead, take all actions required to effectuate such properly taken actions of the Class.

Section 8.4 Board of Directors Meetings. All meetings of the Board of Directors, at which action is to be taken by vote, will be open to the Owners and Eligible First Mortgagees, and agendas for meetings of the Board of Directors shall be made reasonably available for examination by all members of the Association or their representatives and Eligible First Mortgagees, except as set forth in the Bylaws.

Section 8.5 Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "notice and hearing," the following procedure shall be observed, as may be supplemented and further clarified in the Rules and Regulations. The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, a Managing Agent, etc.) shall give notice of the proposed action to all Owners and Eligible First Mortgagees whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be given not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected Person shall have the right, personally or by a representative, to give testimony orally and/or in writing, subject to reasonable rules of procedure established in the Rules and Regulations to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected Person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner or Eligible First Mortgagee having a right to notice and hearing shall have the right to appeal to the Board of Directors from a decision of a proposing party other than the Board of Directors by filing a written notice of appeal with the Board of Directors within ten (10) days after being notified of the decision. The Board of Directors shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 8.6 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association will collect from purchasers, at the time of the initial sale by Declarant of each Unit, subject to the exclusions listed below, an amount not to exceed three (3) months' worth of annual Assessments based on the Association's Budget in effect at the time of the conveyance. In addition, the Association will collect from subsequent purchasers, at the time of such sale of each Unit, subject to the exclusions listed below, an amount not to exceed one (1) months' worth of annual Assessments based on the Association's Budget in effect at the time of the conveyance. Such payments shall not be considered advance payments of annual Assessments. Such working capital payments will not be levied on: (a) the initial sale (but will be levied in the subsequent sale) by Declarant of any Unit to an Affiliate of Declarant; and (b) any transfer by foreclosure or deed in lieu of foreclosure by the First Mortgagee holding a Security Interest in a Unit.

Section 8.7 LIMITATION ON ASSOCIATION LIABILITY. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROPERTY, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THE PROPERTY TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

## ARTICLE 9 ASSESSMENTS

Section 9.1 Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on the Budget.

Section 9.2 Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expense Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon the Budget. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and after any prepayment of or provision for reserves, as determined by the Board of Directors, shall be refunded to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Assessments for Common Expenses, as determined by the Board of Directors in its discretion.

Section 9.3 Apportionment of Annual Assessments. The total annual Assessments for any fiscal year of the Association shall be assessed to the Units in proportion to their percentage of Common Expense Liability as allocated pursuant to Section 4.2, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties or pursuant to service agreements with third parties; (b) General Common Expenses shall be assessed against each Unit as set forth on Exhibit B; (c) Common Expenses associated with the operation, maintenance, repair or replacement of Limited Common Elements, which shall be assessed as set forth on Exhibit B with respect to the Parking-LCE Common Expenses, assessed equally, or assessed on such other equitable basis as the Board of Directors shall determine to the Units to which the specific Limited Common Elements are appurtenant; (d) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited, and Common Expenses or portions thereof which benefit certain Units more than others which shall be allocated in proportion to such benefit; (e) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (f) any Common Expense caused by the misconduct of any Owner(s) or their Occupants, which may be assessed exclusively or on such other equitable basis as the Board of Directors shall determine against such Owner(s); and (g) any expenses which are otherwise charged equally to the Units. All such allocations of Common Expense Liability to the Units on a basis other than the Units' percentage of Common Expense Liability shall be determined by the Board of Directors. To the extent certain items or services benefit only the Owners of a certain type of Unit and/or within a certain Class or Classes and/or to the extent real or personal property owned by the Association is only available for use by or only benefits the Owners of a certain type of Unit and/or within a certain Class or Classes, costs and expenses associated with such items shall be assessed only against the Owners of such type of Unit or within the applicable Class(es).

Section 9.4 Special Assessments. In addition to the annual Assessments authorized above, the Board of Directors may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Directors may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project, specifically including any fixtures and personal property related to it and any other unbudgeted or unanticipated costs of the Association. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 7.3, Section 9.2 and Section 9.3 above.

Section 9.5 Due Dates for Assessment Payments. Unless otherwise determined by the Board of Directors, the Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Board of Directors may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the date and in the installments determined by the Board of Directors, as set forth in the Rules and Regulations. The Board of Directors may establish different installments for different types of Units or for Owners of multiple Units of any type. The Association shall be responsible for charging, collecting, and enforcing the obligations of the Owners to pay Assessments, including any Assessments levied solely against any Class. If any such installment shall not be paid when due and payable, then the Board of Directors may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by Section 38-33.3-315

of the Act or other Applicable Law), fee, or such other charge as the Board of Directors may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of the applicable payment period. However, if the Common Expense Liability is re-allocated in accordance with this Declaration, any installment(s) of an Assessment not yet due shall be recalculated to reflect the re-allocated Common Expense Liability.

Section 9.6 Default Assessments. All Costs of Enforcement assessed against an Owner pursuant to the Condominium Documents, any Fines, and any expense of the Association which is the obligation of an Owner pursuant to the Condominium Documents and is not paid when due shall become a Default Assessment assessed against the Owner's Unit. Notice of the amount and demand for payment of such Default Assessment shall be sent to the Owner prior to enforcing any remedies for non-payment hereunder.

Section 9.7 Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Owners, by acceptance of the Deed or other instrument of transfer of such Owner's Unit (whether or not it shall be so expressed in such Deed or other instrument of transfer), are deemed to personally covenant and agree with all other Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) Default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities located on or in the Common Elements or by abandoning or leasing such Owner's Unit.

Section 9.8 Lien for Assessments; Assignment of Rents. All Assessments (including installments of the Assessments) arising under the provisions of the Condominium Documents shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association shall prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Owner or Owners, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Directors, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied. Upon any default in the payment of any Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or Default Assessments.

Section 9.9 Remedies for Nonpayment of Assessments. If any Assessment (or any installment of the Assessment) is not fully paid when due, then as often as the same may happen, default interest, late charges, and Costs of Enforcement will accrue as set forth in the Rules and Regulations. In addition, if any Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (a) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (b) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, (c) the Association may proceed to foreclose its lien pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Colorado law for foreclosure of real estate mortgages, (d) the

Association may suspend the Owner's right to vote in Association matters until the Assessment is paid, and (e) the Association may pursue any other remedies available pursuant to the Condominium Documents or Applicable Law. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 9.10 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all purchasers of a Unit shall be liable with the prior Owner(s) of such Unit for any and all unpaid Assessments against such Unit and for any and all unpaid working capital payments charged under Section 8.6 above, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Owner. For Assessment purposes, the date a purchaser becomes the Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Owner of the Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by Deed, a purchaser shall be deemed to become the Owner upon the execution and delivery of the Deed or other instruments conveying or transferring title of the Unit, irrespective of the date the Deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments and the status of unpaid working capital payments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 9.11 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the Deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

(a) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

(b) liens recorded prior to this Declaration unless otherwise agreed by the parties thereto; and

(c) the lien of any First Mortgagee except to the extent the Act grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a First Mortgage or by virtue of a Deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such First Mortgagee acquires title to the Unit except to the extent

the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other Persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

The sale or other transfer of any Unit shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof except (a) as provided above with respect to First Mortgagees, (b) in the case of foreclosure of any lien enumerated in this Section, and (c) as provided in the next Section. Further, no such sale or transfer shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 9.12 Statement of Status of Assessments. Within fourteen (14) calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Directors and payment of a reasonable fee set from time to time by the Board of Directors as set forth in the Rules and Regulations, any Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Owner's account setting forth:

(a) the amount of any unpaid Assessments then existing against a particular Unit;

(b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

(c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and

(d) any other information, deemed proper by the Association, including the amount of unpaid working capital payments charged under Section 8.6 above and the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Directors, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the Person or Persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 9.13 Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law, and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Owner in the Common Elements (except a Security Interest in the Common Elements that may be granted by the Association pursuant to the requirements of the Act).

## ARTICLE 10 MAINTENANCE RESPONSIBILITY

Section 10.1 Rights and Duties of Owners.

(a) Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Owner shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise

decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the boundaries of such Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Owner (other than Declarant) shall be permitted to install any hardwood floor or other hard surface improvements in any Unit that might affect adjoining Units by increasing noise or vibrations, without the prior written approval of the Board of Directors, which approval may be denied, or conditioned, in the Board's sole discretion.

(b) The Owner of any Unit shall, at the Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit and in the Limited Common Elements appurtenant solely to such Unit, commencing at a point where the fixtures, equipment, and utilities enter the Unit or appurtenant Limited Common Elements. An Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, plumbing systems, or other building systems or Common Elements (expressly including the Limited Common Elements) or the integrity of the Improvement(s), or impair any easement or hereditament. Without limiting the generality of the foregoing, with respect to any utility line, cable, conduit, pipe or similar improvement serving a Unit, the Owner shall be responsible for its maintenance and repair from the point at which the improvement meets the boundary of the Unit (or if greater, the boundary of the Limited Common Elements appurtenant to and accessible only from the Unit) and the Association shall be responsible for such maintenance and repair where such improvements run on or under the Common Elements to such point. These clarifying provisions are not intended to and shall not be deemed to expand or alter the obligations of Owners or the Association, as applicable, with respect to utility providers or other service providers, or the rights of the Association with respect to the Common Elements (expressly including the Limited Common Elements). Each Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any Limited Common Element balcony, deck or patio and of any other Limited Common Elements appurtenant to and accessible only from the Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition, provided that the Association (a) shall be responsible for all structural repairs, replacements, and non-routine maintenance and repairs (such as painting), (b) may choose to maintain all or any portion of the Limited Common Elements for reasons of uniformity, aesthetics or structural considerations, and (c) may impose standards for maintenance and aesthetics applicable to such Limited Common Elements through the Rules and Regulations.

(c) The Hotel Unit Owner shall maintain the Hotel LCE, at its expense, in accordance with the Hotel Standards. The Club Unit Owner shall maintain the Club LCE, at its expense, in accordance with the standards adopted by the Club Unit Owner. Each Commercial Unit Owner shall maintain the LCE appurtenant to the Commercial Unit, at its expense, in accordance with the Hotel Standards.

(d) The Association shall, at the expense of the applicable Class, maintain, repair and replace the applicable Parking LCE in accordance with the Hotel Standards applicable to parking areas and consistently applied to the entire Project parking areas. In relation to such maintenance, repair, and replacement, the Association shall preserve and protect an Owner's ability to use and enjoy the applicable Parking LCE and shall not unreasonably restrict or prohibit the Owner's (or its Occupants) access to, or enjoyment of, the applicable Parking LCE, subject to the permitted exceptions to this general rule under the Act, specifically C.R.S. 38-33.3-202.5 as applicable to all Common Elements.

(e) The Association, through the Managing Agent, shall maintain the Common Elements in accordance with the Hotel Standards.

Section 10.2 Owner's Negligence. Except as expressly provided in ARTICLE 17, regarding insurance, in the event that the need for maintenance, repair, or replacement of all or any portion of the Project is caused through or by the negligent or willful act or omission of an Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 10.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense all of the Project not required in this Declaration to be maintained and kept in good repair by an Owner.

## ARTICLE 11 MECHANICS' LIENS

Section 11.1 Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner or the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Owner's Unit, against the Unit of another Owner or against the Common Elements, or any part thereof.

Section 11.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the indemnity provided by the provisions of this ARTICLE 11 by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Owner under the provisions of this ARTICLE 11, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

## ARTICLE 12 USE RESTRICTIONS

Section 12.1 Use and Occupancy of Units. Except for uses reserved to Declarant in ARTICLE 14 entitled "Special Declarant Rights and Additional Reserved Rights," and except for any uses reserved to the Hotel Unit Owner, all Residential Units shall be used for dwelling purposes only and shall otherwise be used only in accordance with the Condominium Documents and all Applicable Laws. Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit, subject to the rights of the Declarant and the Association provided in this Declaration.

Section 12.2 Leasing and Occupancy of Units. Except as otherwise restricted herein or in the Rules and Regulations, an Owner of a Residential Unit, and subject to any restrictions or prohibitions on Workforce Housing Units, an Owner may rent or lease such Residential Unit(s) to others for residential purposes, solely in accordance with the Association's rental manager standards, property management

standards, and Regulations, and in accordance with Applicable Laws, and may otherwise use its Unit(s) for any residential purpose that does not cause unreasonable disturbance to other Owners and which are permitted by the Condominium Documents and Applicable Law. In order to assure Unit Owners of eligibility of the Project for any Agency, the Association may adopt rules and regulations with respect to rental of Units to non-Owners. As used in this Section, the term lease shall mean any agreement or arrangement for occupancy of the Unit by persons other than the Owner. Notwithstanding anything to the contrary set forth in the Condominium Documents, Declarant (and its First Mortgagee(s) and the assignee of a Unit acquired from Declarant's First Mortgagee and held for resale purposes) shall have the right to rent any Units owned by Declarant (or any portion(s) of such Units).

Section 12.3 Compliance with Laws, Ordinances, Applicable Laws, and Association Documents. No Unit shall be used for any purpose not permitted by the zoning ordinances of the Town of Mt. Crested Butte, this Declaration, or not in compliance with any local, state or federal law, statue or other ordinance, regulation or rule.

Section 12.4 Use of Common Elements. Except as may be permitted in the Limited Common Elements pursuant to the Condominium Documents, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Board of Directors. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Board of Directors. Owners and Occupants shall not disturb, damage, or have access to, certain restricted access areas in the Common Elements such as those specified in Section 13.1 and any other areas so designated on the Map or in the Rules and Regulations.

Section 12.5 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Board of Directors. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any Applicable Law. No damage to or waste of the Common Elements shall be committed by any Owner or Occupant, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or an Occupant of such Owner's Unit (including all Costs of Enforcement incurred in the defense of claims arising by reason of this Section or incurred in establishing the right to indemnification). Failure to so indemnify shall be a default by such Owner under this Section and shall give rise to a Default Assessment against such Owner's Unit. At its own initiative or upon the written request of any Owner, if the Association determines that further action by the Association is proper, the Association shall enforce the foregoing indemnity as a Default Assessment levied against such Unit.

Section 12.6 Structural Alterations and Exterior Appearance. Subject to the reserved rights of the Hotel Unit Owner, no (i) alterations that affect the exterior of the Improvements or Common Elements, (ii) structural alterations to any Unit, including the construction of any additional skylight, window, or door, and work that affects building mechanical, electrical, plumbing, communications, heating, air conditioning, ventilation, natural gas, structural or other building system or component thereof, (iii) alterations that take or are expected to take more than two weeks to complete or require a building permit; or (iv) except if and to the extent expressly required to be permitted under the Act, window coverings or other improvements, alterations or decorations visible from outside a Unit; in each case, shall be made or caused to be made by any Unit Owner without the prior written approval of Declarant during the Period of Declarant Control and, thereafter, the Board of Directors. The Association may promulgate Rules and Regulations establishing procedures for the approvals required by this Section 12.6. Such Rules and Regulations may include, but may not be limited to, requirements that the Owner submit (a) plans and specifications showing the nature,

kind, shape, height, color, materials, and location of the proposed alterations in sufficient detail for the Association and Declarant to review them; and (b) processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. Unit Owners shall be responsible for ensuring that all alterations comply with the Condominium Documents and with all Applicable Laws and that all necessary approvals are obtained from governmental authorities. No approval given by Declarant or the Association shall be deemed to imply that Declarant or the Association has reviewed any applicable requirements or the requesting Owner's compliance therewith. Without limiting the generality of the foregoing, alteration of a Limited Common Element appurtenant to a Unit may be further restricted pursuant to the Rules and Regulations and the Hotel Standards.

Section 12.7 Pet and Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Project by the Owners, nor shall any fire hazard, safety hazard, or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or unreasonably offensive to others. The Association may adopt additional restrictions regarding pets in the Rules and Regulations or in a separate pet policy.

Section 12.8 Limit on Timesharing. No Owner, excluding the Declarant (and its First Mortgagee(s) and the Assignee of a Unit acquired from Declarant's First Mortgagee and held for resale purposes), shall offer or sell any interest in a Unit under a "timesharing," "vacation club," "private residence club," "non-equity club," "fractional plan" or "interval ownership" or membership plan, or any similar plan without the specific prior written approval of Declarant during the Period of Declarant Control, and thereafter the Board of Directors. Any such approval shall be subject to the requesting Owner's compliance with the Condominium Documents and with all Applicable Laws.

Section 12.9 Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected, or maintained for any purpose whatsoever except such signs as have been approved by Declarant during the Period of Declarant Control and, thereafter, the Board of Directors, except those expressly required to be permitted under the Act (such as certain flags and political signs), if any. Such approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Board of Directors. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only if and to the extent they are in compliance with all Applicable Laws.

Section 12.10 Restrictions on Use of Parking and Storage Areas. The Association will promulgate Rules and Regulations to manage and regulate parking located in the Parking LCE areas to permit, at a minimum, assigned parking in one (1) standard parking space by the Owner of a Residential Unit while in residence. In addition, the Association will promulgate Rules and Regulations to designate storage closets located in the Limited Common Elements designated for Residential Unit storage. Unless written permission is granted by the Board of Directors, (a) no parking shall be permitted at any location on the Common Elements unless specifically designated for parking by Owners and Occupants, while in residence, by the Managing Agent, and (b) no storage is permitted outside of Units except in storage areas, if any, specifically designated by the Association. Parking privileges are limited to periods of occupancy by Owners and Occupants. No Owner may use any parking or storage space assigned to another without permission of the Owner to whom the parking or storage space is assigned. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association may promulgate Rules and Regulations governing parking and storage, and the Association is specifically authorized, but not

obligated, to (i) remove any abandoned or inoperable vehicle, any vehicle parked in any area not designated for parking, any prohibited type of vehicle, any vehicle parked in any space that is assigned to another Person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, except if and to the extent such parking of such vehicle is expressly required to be permitted under the Act, and (ii) remove any improperly stored or hazardous materials, in all cases at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a Default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration. Notwithstanding the foregoing provisions of this Section, Declarant reserves for itself and its agents and designees an easement to go across and to use, and nothing herein shall be construed to prevent Declarant's and its agents' and designees' use of, parking spaces, storage areas, or Common Elements to park vehicles and equipment necessary or desirable for the development and construction of Improvements within the Property and/or to park vehicles in unassigned parking spaces for other purposes during the period of Declarant's Reserved Development Rights.

Section 12.11 Exclusive Use.

(a) Notwithstanding any provisions of this Declaration to the contrary, only the Hotel Unit Owner and Hotel Operator shall be permitted to operate, manage and maintain a hotel and commercial lodging business in the Project. Rental and property management activities for the operation of the Hotel Units may be conducted at all times, 24 hours a day without restriction by the Association or other Owners other than the Rules and Regulations applicable to the Commercial Units on a non-discriminatory basis.

(b) Notwithstanding any restriction or limitation in this Declaration, the Hotel Unit Owner shall have the sole right, without the consent or approval of the Association or other Owners, but without obligation, to (a) operate, maintain and manage the use and occupancy of the Hotel Units, (b) make alterations, additions or improvements, structural and nonstructural, interior and exterior, ordinary and extraordinary, in, to and upon the Hotel Units Hotel LCE, or any other Units owned by the Hotel Unit Owner (including, without limitation, the removal of walls, floors, ceilings and other structural portions of any improvements within such units), and (c) expand, alter, discontinue, replace or add to all or any part of the Hotel Units and Hotel LCE.

Section 12.12 No Limitation on Reserved Declarant Rights. Nothing set forth in this Section 12.12 shall interfere with the Reserved Declarant Rights or with Declarant's right or ability to exercise its rights reserved hereunder, including the Reserved Declarant Rights.

## ARTICLE 13 EASEMENTS

Section 13.1 Easement of Enjoyment; Common Elements. Every Owner shall have a perpetual non-exclusive right and easement for the use and enjoyment of, and for access over, across, and upon, any portion of the Common Elements designated for common use (but specifically excluding Common Elements designated for uses such as maintenance, storage, utility installations and service areas), which includes the benefit of a non-exclusive easement of access over, across and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and, where appropriate, vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

(a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;

(b) the right of the Association from time to time to assign on an equitable basis portions of the Common Elements such as parking spaces or storage for the exclusive use of the Owner of a particular Unit by a resolution of the Board or other appropriate written instrument;

(c) the right of the Association to adopt, from time to time, Rules and Regulations concerning vehicular traffic and travel upon, in, under, and across the Project;

(d) the right of the Association to adopt, from time to time, such Rules and Regulations concerning the Project as the Association may determine are necessary or prudent for the management, preservation, safety, control, orderly operation, or use of the Project for the benefit of all Owners; and

(e) the agreement of all Owners, pursuant to this Declaration, to use reasonable and good faith efforts not to interfere with the use and enjoyment of other Owners of the Common Elements and such other Owners' respective Units.

Section 13.2 Easement of Enjoyment; Limited Common Elements. Subject to the provisions of this Declaration and the Rules and Regulations, every Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to such Owner's Unit.

Section 13.3 Delegation of Use. Any Owner may delegate, in accordance with the Condominium Documents, the Owner's right of enjoyment in the Common Elements to an Occupant of the Owner's Unit.

Section 13.4 Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, as shown on the recorded Map, or as reserved or granted under this Declaration. The recording data for recorded easements and licenses appurtenant to or included in the Property as of the date of this Declaration is set forth on Exhibit C attached hereto and incorporated herein by this reference.

Section 13.5 Easements for Encroachments. The Project, and all portions of it, is subject to easements hereby created for encroachments between Units and the Common Elements as follows:

(a) in favor of all Owners, so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

(b) in favor of each Owner, so that the Owner shall have no legal liability when any part of such Owner's Unit encroaches upon the Common Elements or upon another Unit; and

(c) in favor of all Owners, the Association, and the Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 13.5 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project; provided, however, that encroachments created by the intentional act of an Owner shall not be deemed to create an easement on the Property and shall be

considered an encroachment upon the Project. Such encroachment shall be removed at Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a Default Assessment to the Owner.

Section 13.6 Utility Easements. There is hereby created a general non-exclusive easement upon, across, over, in, and under all of the Property Units and Common Elements for ingress and egress and for the purpose of installation, replacement, repair, and maintenance of all utilities and services for the Owners, including but not limited to water, sewer, gas, telephone, internet, electricity, security systems, cable television, cable, and other communication systems, and for ingress and egress in connection therewith. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Common Elements and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility or service company using this general easement shall (i) use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Owners, the Association, or Declarant; (ii) complete its installation and maintenance activities as promptly as reasonably possible; and (iii) restore the surface to its original condition as soon as possible after completion of its work. Should any utility or service company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant and the Association (subject to Declarant's approval during the Period of Declarant Control), shall each have the right and authority, but not the obligation, to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 13.6 shall in no way void, extinguish, or modify any other recorded easement on the Property.

Section 13.7 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter upon the Property in the proper performance of their duties.

Section 13.8 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 13.9 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of an Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Owners shall be a Common Expense. In order to effectuate this right, the Association shall retain a pass key or other access device to each Unit and an Owner shall not change the exterior lock or other access system on its Unit without the Board's prior written consent and providing the Association with a replacement key or access device to accommodate the new lock or other access system.

Section 13.10 Reservation of Air Rights and Rights in Subjacent Areas. The Declarant reserves all air rights over and under the Project for future development of the maximum number of units permitted

by and subject to applicable land use laws, ordinances and regulations. In connection with the reservation and furtherance of such rights Declarant further reserves (i) the right of subjacent and lateral support for any such improvement in any Common Element to which such improvement abuts, (ii) access over such portions of the Common Elements as may be reasonably necessary to provide ingress to and egress to and from any improvements built in such area, including temporary easements during construction and (iii) utility service for such additional development. Such expansion may be accomplished by the filing of a supplement to the Map or by the filing of a separate declaration and separate map in order to create a separate condominium regime. The supplement shall set forth (A) any Common Elements attributable to the Units shown on the supplement, (B) the floor plans and linear dimensions of the interior of the Units, (C) the designation by number or other symbol of the Units, (D) the elevation of the unfinished interior surfaces of the floors and ceilings of the Units as established from a datum plane and the distances between floors and ceilings, and (E) the number of square feet of space included within such expansion Units. Upon filing such supplement to the Map, the Allocated Interests all of the Units shall be equitably adjusted so that the expansion Units bear a fair share of the cost of operating and maintaining the Project. The rights reserved in this section may be separately assigned or conveyed by the Declarant.

Section 13.11 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this ARTICLE 13, even though no specific reference to such easements or to this ARTICLE 13 appears in the instrument for such conveyance.

Section 13.12 Easement for Warranty Work. To the extent that and for as long as any Person remains liable under any warranty, whether statutory, express or implied, for any act or omission in the development or construction of any portion of the Project, then such Person and its contractors, agents and designees shall have the right, from time to time, to enter the Units (after reasonable notice to the affected Owner) and/or the Common Elements for the purpose of making any necessary inspections, tests, repairs, improvements and/or replacements required for such Person to fulfill any of its warranty obligations. Failure of the Association or any Owner to grant such access may result in the applicable warranty being nullified and of no further force or effect.

Section 13.13 Reserved Easement of Hotel Owner. There is reserved to the Hotel Unit Owner, its express successors, transferees, designees, agents, assigns and co-licensees, the exclusive right to provide hotel services on the Project in accordance with the Hotel Standards; provided, a Commercial Unit Owner, as approved by the Board, may be granted the non-exclusive right to sell, serve and deliver alcoholic beverages of every kind and character to and within all portions of the Project, specifically including the Hotel Unit(s), Club Unit, Residential Units, Commercial Units, the Common Elements, and all Limited Common Elements appurtenant to such Units. The exercise or grant of such exclusive and non-exclusive rights shall not be deemed to preclude, prevent or prohibit other uses of the Common Elements or the Units not in conflict with such exclusive and non-exclusive rights (for example, the Club Unit Owner may provide alcoholic beverages to Club members). Grantees of any interest in the Project, by acceptance of any deed, lease or license, shall be and are hereby bound by such reservations of rights.

Section 13.14 Additional Easements. In the event an additional easement is reasonably requested by an Owner or the Association for purposes consistent with the intent of this Declaration, each Owner and the Association, as applicable, will act reasonably and in good faith in evaluating the request and will not unreasonably withhold its consent to the granting of any such easement.

## ARTICLE 14 SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 14.1 Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete Improvements indicated on the Map(s) filed with this Declaration.

(b) Exercise of Development Rights. The right to exercise any Development Right reserved in ARTICLE 15 of this Declaration.

(c) Sales, Management and Marketing. The right to locate, relocate and maintain sales offices, management offices, operational facilities or offices, signs advertising the Project, the Residential Units, Club Unit, Commercials Units, and the Hotel Unit(s) and models within the Common Elements and any Unit or Units owned by Declarant, and the right to remove the same. Declarant shall have the right to show Units and the Common Elements to prospective purchasers and to arrange for the use of any parking, storage, or recreational facilities within the Common Elements by prospective purchasers.

(d) Easements. The right to create and grant easements through the Common Elements to any party for any purpose including, without limitation, for purposes of (i) making Improvements within the Project, (ii) the construction and development of Real Estate which may be added to the Project, including, without limitation, the Expansion Property, and/or (iii) exercising any Reserved Declarant Rights.

(e) Master Association. The right to annex into and make the Project subject to a master association.

(f) Subassociation(s). The right to create one or more subassociations to govern particular types of Units, including the right to record additional declarations applicable thereto.

(g) Control of Association and Board of Directors. During the Period of Declarant Control, the right to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

(h) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

(j) Signs. The right to maintain signs on the Common Elements advertising the Project in accordance with the Hotel Standards.

(k) Post-Sales. The right to use the Common Elements to maintain customer relations and provide post-sale and re-sale services to Owners.

(l) Merger. The right to merge or consolidate the Project with another project of the same form of ownership.

(m) Parking/Storage. The right to use and to allow others to use all parking and storage areas in connection with its marketing efforts, and the right to park vehicles for other purposes in accordance with Section 12.10.

Section 14.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 14.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by grant, dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, tramways, ski ways, public trails, public bridges, flumes, ditches, drainage, recreation areas, Unit(s) access, neighbor access, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners and/or the Association.

(c) Easement Rights. The right to grant easements in, on, over or through the Common Elements to any third party for the development or improvement of the Property or other Real Estate, as determined by Declarant.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration or the Act.

Section 14.3 Limitations on Special Declarant Rights and Additional Reserved Rights. Special Declarant Rights and Additional Reserved Rights may be exercised at any time during the period described below in this Section unless sooner terminated (i) by an amendment to this Declaration executed by Declarant; (ii) pursuant to a specific provision for earlier termination set forth above; or (iii) if and to the extent otherwise required under the Act. Any Special Declarant Right or Additional Reserved Rights may be exercised by Declarant so long as Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right; (c) owns any Unit or any interest therein; or (d) holds a Security Interest in any Unit(s); provided, however, all Special Declarant Rights and Additional Reserved Rights shall terminate thirty (30) years after the date of recording this Declaration.

Section 14.4 Interference with Special Declarant Rights or Additional Reserved Rights. Neither the Association nor any Owner may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of Declarant.

Section 14.5 Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this ARTICLE 14 for the benefit of Declarant may be transferred, in whole or in part, to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 15 RESERVATION OF DEVELOPMENT RIGHTS

Section 15.1 Expansion Rights. It is anticipated that the Project will be developed in a series of phases. Accordingly, Declarant expressly reserves the right to subject all or any part of the Real Estate

described in Exhibit E attached hereto and hereby incorporated by reference (the "Expansion Property") to the provisions of this Declaration upon the substantial completion of Improvements on the Expansion Property. The consent of the existing Owners, First Mortgagees or other holders of Security Interests shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. In addition, Declarant also expressly reserves the right to add unspecified Real Estate to the Project as allowed by the Act. Additional development rights not previously reserved may be reserved within all or any portion of the Expansion Property as allowed by the Act.

Section 15.2 Development and Withdrawal Rights. Declarant expressly reserves the right to create Units and/or Common Elements (expressly including Limited Common Elements), to combine Units, to subdivide Units, to convert Units into Common Elements (expressly including Limited Common Elements), to convert Common Elements into Units, to allocate Common Elements as Limited Common Elements, and to allocate Real Estate as Limited Common Elements on all or any portion of the Real Estate reserved for future development in this Declaration or pursuant to the Map. Any improvements created, constructed or installed pursuant to the previous sentence may be referred to herein as "Additional Improvements." Declarant may exercise any or all of the Development Rights so reserved at any time within the period described in Section 15.9 with respect to all or any of the Real Estate identified as subject to Development Rights in the Declaration. No assurances are made with respect to the boundaries of any parcels that may be developed or the order in which the parcels may be developed. Exercise of a Development Right with respect to any one parcel does not require exercise of a Development Right on any other parcel of Real Estate subject to Development Rights. No assurances are made that any further development will occur. If all or any part of the Expansion Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Property that is designated as subject to withdrawal in this Declaration from the Project by recording a document evidencing such withdrawal in the Records and, if Declarant is not then the owner of the portion of the Property being withdrawn, with the consent of the owner of such portion. The Real Estate withdrawn from the Project shall be subject to whatever easements, if any, as are reasonably necessary for the benefit of the Units, the Owners and the Association for access to or operation of the Project. Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easements. Declarant alone is liable for all expenses in connection with Real Estate subject to Development Rights for as long as the same remains subject to Development Rights.

Section 15.3 Amendment of Declaration. If Declarant elects to submit Additional Improvements to this Declaration, or to subdivide or to convert Units or Common Elements, then at such time as a certificate of completion executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components of the Improvements on the Expansion Property or the Additional Improvements are substantially completed is obtained, Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The Allocated Interests apportioned to each Unit in the Project shall be based on the formulae set forth in Section 4.2. Mere subdivision of a Unit shall not change the Allocated Interests of any Unit not included in such subdivision. The amendment to this Declaration shall contain, at a minimum, the legal description of the Expansion Property, or a part thereof, or a description of the Real Estate on which the Additional Improvements being submitted to this Declaration are located and a revised schedule of the Allocated Interests appurtenant to the Units in the Project.

Section 15.4 Supplement to the Map. Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Map showing the location of the Additional Improvements constructed on the Expansion Property or the construction, combination, subdivision, conversion or

allocation of Units or Common Elements allowed by this Article. The supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 15.5 Interpretation. Recording of amendments to this Declaration and supplements to the Map in the Records shall automatically:

(a) vest in each existing Unit the reallocated Allocated Interests appurtenant to such Unit; and

(b) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property as expanded. The Expansion Property, or any part thereof, or the Additional Improvements constructed on the Property as expanded shall be added to and become a part of the Project for all purposes. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 15.6 Maximum Number of Units. The maximum number of Units in the Project that may be created shall not exceed [220] Units, or, if allowed by the Act, the maximum number of Units allowed by any governmental entity having jurisdiction over the Property, pursuant to any development plan or approvals for the Property and the Expansion Property. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

Section 15.7 Construction Easement. Declarant reserves an easement through, over and across the Common Elements and Units as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration without consent of any party. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on any of the Property reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units. If Declarant grants any such easements, Exhibit C to this Declaration will be amended to include reference to the recorded easement.

Section 15.8 Reciprocal Easements. If property is withdrawn from the Project ("Withdrawn Property"):

(a) the owner(s) of the Withdrawn Property shall have whatever easements are necessary or appropriate, if any, for access, utility service, repair, maintenance and emergencies over and across the Project for the benefit of the Withdrawn Property; and

(b) the Owner(s) in the Project shall have whatever easements are necessary or appropriate, if any, for access, utility service, repair, maintenance, and emergencies over and across the Withdrawn Property for the benefit of the Units.

Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the owner(s) of the Expansion Property and Withdrawn Property and the Owners in the Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section 15.8 shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section 15.8.

Section 15.9 Termination of Development Rights. The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire thirty (30) years after the date of recording this Declaration in the Records, unless the Development Rights are reinstated or extended by the Association as provided in the Act, subject to whatever terms, conditions, and limitations the Board of Directors may impose on the subsequent exercise of Development Rights by Declarant. Declarant may at any time release and relinquish some or all of the Development Rights with respect to all or any part of the Real Estate subject to such rights by instrument executed by Declarant and effective when recorded in the Records. Upon the expiration or other termination of the Development Rights, any Real Estate then subject to such rights shall become Common Elements or Units, as applicable.

Section 15.10 Interference With Development Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that will interfere with or diminish any Development Rights reserved by this ARTICLE 15 without the prior written consent of Declarant. In the event an Owner or the Association takes any such action, or is the losing party in any proceeding related to such action, then (in addition to all other remedies of Declarant) such Owner or the Association shall be responsible for Declarant's costs, including reasonable attorney's fees, and shall also be responsible for any and all consequential damages, including damages as the result of any delay, related to such action.

Section 15.11 Transfer of Development Rights. Any Development Rights created or reserved under this ARTICLE 15 for the benefit of Declarant may be transferred, in whole or in part to any Person by an instrument expressly describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 16 INSURANCE

Section 16.1 Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. The Association shall have the power and authority to obtain additional policies or coverages not specified herein in the Board's discretion. If such insurance is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy, or if the Board of Directors determines that any insurance described herein will not be maintained, the Board of Directors shall promptly cause notice of that fact to be delivered to all Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Project for special form covered causes of loss (or such equivalent coverage as may hereafter be customarily offered in the insurance industry) in an amount not less than the full insurable replacement cost of the insured property (as determined by the Board of Directors) less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land and other items normally excluded from property insurance policies. Co-insurance shall not be permitted.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Project, insuring the Board of Directors, the Association, the Managing Agent, and their respective employees, agents and all Persons acting as agents therefor. The Declarant shall be included as an additional named insured in Declarant's capacity as an Owner and member of the Board of Directors. Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership interest in, existence, use or management of the Common Elements or membership in the Association. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association shall maintain fidelity insurance on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than two months' current annual Assessments plus reserves, as calculated from the current Budget of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent, shall be an insured employee in the policy of fidelity insurance specified above.

(d) D&O Coverage. The Association shall maintain directors and officers coverage for members of the Board of Directors and any other parties that the Board of Directors elects to cover by such insurance, which may include, without limitation, the Managing Agent, committee members, volunteers, and Declarant representatives.

(e) Other Insurance. The Board of Directors may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Directors deems reasonable and necessary in order to protect the Project, the Association and the Owners.

(f) Owners' Policies. Each Owner of a Unit is encouraged to obtain additional insurance at such Owner's own cost for such Owner's own benefit covering all personal property within such Owner's Unit and all Improvements within the interior finished boundaries of such Owner's Unit. All such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Owner. Each Owner waives and releases all claims against the Association to the extent such claim is covered by applicable insurance policies, regardless of whether damage loss or injury arose from the negligence or breach of any agreement by the Association. Each Owner acknowledges that insurance obtained by the Association does not obviate the need for an Owner to obtain separate insurance for such Owner's benefit. Each Owner may also obtain general liability insurance at such Owner's own cost for such Owner's own benefit covering operations and activities within such Owner's Unit. Such coverage may also extend to cover any legal liability imposed on an Owner due to such Owner's interest in the Common Elements.

Section 16.2 Required Provisions. All insurance policies carried by the Association pursuant to the requirements of this ARTICLE 16 must provide that:

(a) each Owner and each Eligible First Mortgagee is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(b) the insurer waives its rights to subrogation under the policy against any Owner or member of an Owner's household;

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

(d) if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the risks covered by the policy (other than an Owner's policy covering such Owner's personal property), the Association's policy provides primary insurance;

(e) any loss covered by the policies must be adjusted with the Association;

(f) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;

(g) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or holder of a Security Interest; and

(h) the insurer issuing the policy may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been delivered to the Association and any Owner(s) and holder(s) of Security Interests to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 16.3 Claims by Owner. An Owner may file a claim against the policy of the Association to the same extent, and with the same effect, as if the Owner were a named insured if the following conditions are met: (a) the Owner has contacted the Board of Directors or Managing Agent in writing, and in accordance with any applicable association policies or procedures for owner-initiated insurance claims, regarding the subject matter of the claim, (b) the Owner has given the Association at least fifteen (15) days to respond in writing, and, if so requested, has given the Association's agent a reasonable opportunity to inspect the damage; and (c) the subject matter of the claim falls within the Association's insurance responsibilities. The Association's insurer, when determining premiums to be charged to the Association, shall not take into account any request by an Owner for a clarification of coverage.

Section 16.4 Adjustment of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Owner a pro rata share of any deductible paid by the Association.

Section 16.5 Copies of Policies. A copy of each insurance policy obtained by the Association shall be made available for inspection by any Owner at reasonable times.

## ARTICLE 17 RESTORATION UPON DAMAGE OR DESTRUCTION

Section 17.1 Duty to Restore. Any portion of the Project, for which the Association is required to carry insurance under the Act, or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) the Project is terminated;

(b) repair or replacement would be illegal under Applicable Law or prohibited under the Condominium Documents;

(c) sixty-seven percent (67%) of the actual Total Voting Power of the Owners vote not to rebuild (unless a lesser percentage is required by Applicable Law and cannot be varied by Agreement, in which case such lesser percentage shall apply but such lesser percentage shall be required to include the vote not to rebuild of every Owner of a Unit or Limited Common Element that will not be rebuilt); or

(d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Project is not repaired or replaced as allowed by Subsections (a), (b) and (c) above, then the Real Estate in the Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 17.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 17.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors and any percentage of Owners required to approve the same under the Act.

Section 17.4 Replacement of Less Than Entire Property. If only a portion of the Project (rather than the entire Project) is repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project and any remaining proceeds (after any other distribution required by Applicable Law) shall be distributed or credited as follows:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must first be distributed or credited to the Owner(s) of the Unit and to the Owner(s) of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed or credited to each Owner or holder of a Security Interest, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Owners vote not to rebuild a Unit, the Allocated Interests of the Unit shall be reallocated as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocation.

Section 17.5 Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Directors, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Owners and holders of Security Interests 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 Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration and the Act. Except to the extent otherwise required by the Act, no provision of the

Condominium Documents shall be construed to grant to any Owner, any priority over any rights of any First Mortgagees pursuant to the terms of their Security Interests in the case of the distribution to Owners of insurance proceeds for losses to Units and/or the Common Elements or any portions thereof.

Section 17.6 Certificates by the Board of Directors. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

(a) whether or not damaged or destroyed Property is to be repaired or restored; and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 17.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Owners or holders of Security Interests, the Board of Directors, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Owners and the holders of Security Interest.

## ARTICLE 18 CONDEMNATION

If all or part of the Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

## ARTICLE 19 MORTGAGEE PROTECTIONS

Section 19.1 Introduction. This ARTICLE 19 establishes certain standards and covenants which are for the benefit of Eligible First Mortgagees. This ARTICLE 19 is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control. To the extent permitted under Colorado law and as applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 19.2 Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of the stated percentage of the voting power of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to the same voting power as allocated to the encumbered Unit.

Section 19.3 Notice of Actions. Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and Unit number), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;

(b) if requested by such Eligible First Mortgagee, any delinquency in the payment of Assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) any proposed action which would require the consent of Eligible First Mortgagees as set forth in this Article;

(e) any judgment rendered against the Association having a material effect on the ability of the Association to perform its obligations herewith; and

(f) if requested by such Eligible First Mortgagee, a copy of any financial statement of the Association.

Section 19.4 Consent Required. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the consent of sixty-seven percent (67%) of the Eligible First Mortgagees:

(a) sale, conveyance or encumbrance of the Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other purposes provided for in this Declaration will not be deemed a transfer within the meaning of this clause);

(b) restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(c) termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;

(d) merger of the Project with any other common interest community; or

(e) any decision not to repair or to replace the Common Elements when repair or replacement is otherwise required under this Declaration.

Section 19.5 Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed action requiring the approval of Eligible First Mortgagees within sixty (60) days following the receipt of notice of such proposed action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 19.6 First Mortgagees' Rights.

(a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by a First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency. In addition, First Mortgagees of Declarant shall be entitled to cure, following written notice, any violation, breach of, or failure to comply with any provision of the

Condominium Documents by Declarant before the Association or its Managing Agent may exercise remedies against the Declarant or the Declarant's Units.

Section 19.7 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this ARTICLE 19 shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Board of Directors;

(b) prevent the Association or Board of Directors from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of ARTICLE 17 entitled "Restoration Upon Damage or Destruction."

Section 19.8 Reserved Declarant Rights. No provision or requirement of this ARTICLE 19 entitled "Mortgagee Protections" shall apply to or contravene any Reserved Declarant Rights reserved to Declarant in this Declaration.

Section 19.9 Lien Protection for Mortgagees. Except as set forth in the Act or as required by other Applicable Law, no violation or breach of or failure to comply with any provision of the Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Security Interest taken in good faith or for value and perfected by recording in the Records, nor shall such violation, breach, failure to comply or action to enforce affect, defeat, render invalid or impair the title or interest of the holder of any such Security Interest or the title or interest acquired by any purchaser upon foreclosure of any such Security Interest or other lien.

Section 19.10 Audited Financial Statement. Upon written request from any Agency or First Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the at the expense of such First Mortgagee.

## ARTICLE 20 HOTEL UNIT OWNER RIGHTS AND DISCLOSURES

Section 20.1 Rights of Hotel Operator. In addition to all other rights and remedies available under this Declaration or the Act, the Hotel Operator shall have the following additional rights:

(a) If the Association fails to maintain any Common Element in accordance with the Hotel Standards, and fails to correct the deficiency within thirty (30) days after the Hotel Unit Owner has given the Association written notice of such failure, the Hotel Unit Owner may correct the deficiency by performing any maintenance, repair or replacement as the Hotel Unit Owner deems necessary to bring the Common Elements into compliance with the Hotel Standards. The Association shall reimburse the Hotel Unit Owner for all costs incurred by the Hotel Unit Owner to correct the deficiency within thirty (30) days after the delivery of an invoice therefor to the Association. If the Association fails to reimburse the Hotel Unit Owner within such thirty (30) day period, then in addition to any other remedies the Hotel Unit Owner may have, at law or in equity, the Hotel Unit Owner may offset the amount owed to it against Assessments levied against the Hotel Unit(s).

(b) Declarant hereby reserves for the Hotel Unit Owner the right to (a) impose rules and regulations for the use of the Limited Common Elements appurtenant to the Hotel Unit(s) and (b) impose reasonable fees for an Owner's use of such Limited Common Elements and (c) deny use of such Limited Common Elements in the event that an Owner fails to comply with the rules and regulations or fee requirements of the Hotel Unit Owner.

(c) Notwithstanding anything to the contrary contained in this Declaration, the Hotel Unit Owner shall have the right to hang, place or install signage on and within the Hotel Unit(s) as well as on any Common Element (other than Limited Common Elements appurtenant to a Unit or to a Class of Units, without the consent of such Unit Owner or applicable Class), including any portion of the Project's building facade, with the commercially reasonable consent of the Association, but without the consent of any Owner, on the conditions that (i) the Hotel Unit Owner repairs any damage to any Common Element caused thereby at its expense, and (ii) such alteration complies with all applicable requirements of the Association Documents and applicable law.

(d) Notwithstanding anything to the contrary contained in this Declaration, and in addition to the rights of the Hotel Operator under Section 12.11 above, the Hotel Operator shall have the right to install, repair, replace and modify pipes, conduits and other facilities in, across, through and under the Common Elements without the consent of any Owner or the Association, on the conditions that (i) the Hotel Operator repairs any damage to any Common Element caused thereby at its expense, and (ii) such alteration complies with all applicable requirements of the Association Documents and applicable law.

(e) By accepting a deed to a Unit, all Owners hereby grant their consent to the operation of the Hotel (which includes the periodic use of certain Common Elements for Hotel purposes), and hereby grant a license and possessory interest to the Hotel Unit Owner for such purposes.

(f) Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any right of the Hotel Unit Owner under this Article 20 without the prior written consent of the Hotel Unit Owner. Any action taken in violation of this Section 20.1 shall be void.

Section 20.2 Hotel Disclosure.

(a) The Hotel Unit(s) within the Project may be used and operated for purposes specifically required by the terms and conditions of a hotel operating agreement or similar agreement wherein the Hotel Unit Owner will own, occupy and/or operate all or a portion of the Hotel Unit(s) to conduct Hotel operations within the Project. The Hotel Unit Owner has the right to terminate its hotel operating agreement, and as a result there are no assurances that the Hotel will be operated under a brand name or under any other brand hotel "flag," or that any Hotel operation will exist at the Condominium. The Hotel Standards may change from time to time, and such changes may impact the financial obligations of the Association.

(b) The Common Elements and Limited Common Elements will be operated, maintained and repaired in accordance with the Hotel Standards and the budget of the Association will include costs and expenses necessary to maintain the Common Elements and Limited Common Elements in accordance with the Hotel Standards. If the Association fails to maintain the Common Elements and Limited Common Elements in accordance with the Hotel Standards pursuant to the terms of Section 20.1 set forth herein, the Hotel Operator has the right, pursuant to Section 20.1 to

perform such maintenance obligations and to charge the Association for the expenses incurred in connection therewith.

(c) No Owner shall have any right, title or interest in the brand name of the Hotel and shall not use the name of the brand hotel company or any other brand name of the Hotel Unit Owner in any manner except as may be specifically set forth by separate agreement between the Hotel Unit Owner and Owner.

(d) Notwithstanding any contrary provision of this Declaration or the other Condominium Documents, no Unit may be identified or affiliated in any way with any hotel "flag" (that is, the brand name of any hotel management or franchise company, such as Marriott, Hyatt, or Hilton) other than the brand name (if any) by which the Hotel Unit(s) are identified.

## ARTICLE 21 ALTERNATIVE DISPUTE RESOLUTION OF CERTAIN CLAIMS

Section 21.1 **IMPORTANT NOTICE: Agreement to Encourage Resolution of Disputes; Exclusive Procedures; Waiver of Jury Trial; Statutes of Limitation**. Declarant, the Association, and their respective officers and directors, all Owners, and any Person not otherwise subject to the Declaration but who agree to submit to the procedures set forth in this Article (these "Claims Procedures"), including all construction professionals, architects, contractors, subcontractors, developers, builders, builder vendors, engineers, inspectors and others who performed or furnished any engineering, design, planning, supervision, inspection, construction or observation of the construction of any improvement in the Project (each of the foregoing being referred to as a "Party"), hereby agree to encourage the amicable resolution of disputes involving the Project and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims, as defined below, each alleges to have to the Claims Procedures set forth herein and not to a court of law. **All Parties herby agree to the mandatory mediation and arbitration of all Claims as set forth in this Article and irrevocably waive any right to trial of any Claim by jury or otherwise in a court of law.**

**Each Party agrees that these Claims Procedures shall be the sole and exclusive remedy that each Party shall have for any Claim**. Should any Party commence litigation or any other action against any Party in violation of the terms of this Article, such Party shall reimburse all costs and expenses, including attorneys' fees, incurred by the other Party in such litigation or action within ten (10) days after written demand.

The Parties understand and agree that no Claim may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 21.2 Statement of Clarification; Association and Owner Responsibilities. Without modifying or restricting the scope of these Claims Procedures and as a statement of clarification only, the intent of these Claims Procedures is to foster constructive dialogue between the Parties, to permit corrective measures to be implemented without the necessity of final settlement documentation, to inform Parties of implications related to certain Claims that may not otherwise be readily apparent to such Parties, and to assist the Parties in resolving Claims, if possible, *before* incurring significant legal and consultant expenses, particularly through the informal Claims Procedures set forth in Section 21.4 below. The Association and its Board and each Owner understand and acknowledge the importance of a regular inspection and maintenance program for the Project and the Units therein and shall comply with all maintenance manuals and other documents and recommendations provided to the Association and/or Owners with respect to the inspection, operation and routine maintenance of all systems, equipment, and similar items (including, but not limited to, mechanical, electrical, plumbing, structural and exterior systems and improvements) made

part of or serving the Project or its Units. The Association and each Owner shall perform such recommended inspection and maintenance and shall make all necessary repairs and maintenance called for to reasonably address the results of these inspections and to maintain the Project and its Units to a level consistent with its original quality. Further, the Board and each Owner shall cooperate, at no cost or expense to them, with all inspections that may be undertaken by or at the request of the Declarant on or with respect to the Project or its Units and any improvement thereon or therein. The Association and each Owner understand, assume the risk and agree that, if the Association or such Owner fails to follow the inspection, maintenance and repair requirements and standards contained in such manuals or materials delivered to them and such failure causes, whether in whole or in part, damage to the Project or its Units, to any improvement within the Project or to other property, the resulting damage shall not be deemed to be the result of a design or construction defect.

Section 21.3 Certain Definitions.

21.3.1 Definition of Claim. As used in this Article, the term "Claim" shall mean all claims, disputes and other controversies between one Party and another Party, regardless of how the same may have arisen or on what it might be based, excepting only those matters identified as exclusions in this Section below. Without limiting the generality of the foregoing, "Claim" shall include all claims, disputes or controversies relating to or arising out of, in whole or in part, any of the following: (a) any Agreement for Sale and Purchase between Declarant and any Owner, including in relation to the Property, the Project, or the Unit; (b) the purchase of the Unit; (c) the interpretation of the terms, conditions, and restrictive covenants of the Condominium Documents; (d) the soils of any property that lie within the Project or the presence of radon and/or mold within any Unit or other areas within the Project; (e) land development, design, construction and/or alteration of any of the improvements within the Project and/or any alleged defect therein; (f) any rights, obligations or duties of any Party under any of the Condominium Documents or any warranty, whether express, implied or limited, owed by a Party; (g) any limited warranty agreement between Declarant and any Owner and/or the Association; (h) any breach of any of the foregoing referenced documents; or (i) any claim for indemnity or contribution related to or arising out of any of the foregoing Claims.

Notwithstanding the foregoing, the following will not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the Claims Procedures set forth in this Article: (i) any suit by the Association to collect Assessments or other amounts due from any Owner, (ii) any suit or other action by the Association or Declarant to act under or enforce any provisions of this Declaration relating to maintenance obligations, mechanics lien obligations, additions or alteration of improvements by Owners, easements, Reserved Declarant Rights, and/or any restrictive covenants or obligations imposed on Owner through this Declaration, including any suit to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) or such other ancillary relief as the court may deem necessary, (iii) any action by the Association in which the Owner is given "notice and hearing," and (iv) any suit between Owners, which does not include Declarant or the Association as a party.

21.3.2 Definition of Defect Claim. Any Claim involving the development, design, construction and/or alteration of the Project or any improvement within the Project and/or any alleged defect therein, however arising, is referred to herein as a "Defect Claim" and the alleged defect, the "Alleged Defect." The Association, its officers, directors and members, and Owners generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement within the Project is due to a construction defect and, similarly, Declarant and other construction and design professionals that are Parties hereunder generally acknowledge, understand and agree that not every necessary repair or replacement of an improvement is due to faulty required maintenance of or damage to such improvement. Often, such repair and replacement issues arise from a combination of issues that may or may not include the original design and construction, the level of inspection and maintenance programs (or lack thereof) and the existence of other factors such as unusual weather events or conditions, improper use and/or

unforeseen wear and tear. This Article supports a proper evaluation of all factors and encourages a collaborative and comparative approach to responsibility.

Section 21.4 Informal Procedures.

21.4.1 Association Meetings. For a period of eight (8) years following the recording of this Declaration, notices of Association and director meetings (including notice of agenda items relating to potential Defect Claims) shall be given to Declarant, and Declarant and/or its representative(s) shall be entitled to attend and participate in at least one (1) meeting of the Association's members to discuss any potential Claim against Declarant. The Declarant and the Board agree to use their respective good faith efforts to engage in constructive dialogue toward the goal or resolving any design or construction concerns.

21.4.2 Initial Notice. Any Party asserting a Claim ("Claimant") against another Party ("Respondent") shall give written notice to each Respondent and to the Board stating Claimant's good faith description of: (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim, and (ii) the Claimants' desire to meet with the Respondent to discuss in good faith, ways to resolve the Claim. In that legal and professional fees are discouraged at this stage of these Claims Procedures, no statement as to the legal basis of the Claim or of any proposed remedy is necessary.

21.4.3 Right to be Heard; Negotiation. Any Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and the Claimant shall make itself reasonably available upon the request of Respondent to meet in person and to confer for the purpose of resolving the Claim by good faith negotiation. The Parties shall confer and negotiate in good faith toward such resolution for a minimum period of forty-five (45) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 21.4.2 above. Notwithstanding such minimum negotiations period, the Parties are encouraged throughout these Claims Procedures to attempt to resolve any differences between them through ongoing communications and informal dialogue. Any settlement of the Claim through discussion and negotiation shall be documented in writing and signed by the Parties in the manner described in Section 21.6.4 below.

21.4.4 Right to Inspect, Cure and Correct. Any Respondent shall have the right (without obligation), before the institution by the Claimant of binding arbitration below, to inspect, cure and correct any improvement or condition within the Project with respect to a Defect Claim, as follows:

(1) In addition to other rights and obligations set forth in this Article, a Respondent may elect to inspect the Alleged Defect, in which event the Respondent shall complete the initial inspection and testing within thirty (30) days after the date that the Claimant has provided notice to each Respondent pursuant to Section 21.4.2 above, and at a mutually agreeable date and time. The Respondent shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the Project for the inspection, the Respondent shall supply the Claimant with proof of liability insurance coverage. The Respondent shall, upon request, allow the inspection to be observed and recorded or photographed. Nothing that occurs during a Respondent's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by the Claimant or any potential party in subsequent litigation.

(2) Within sixty (60) days of completion of the initial inspection or testing, the Respondent may elect to repair some or all of the Alleged Defects by sending a written notice of election to repair to the Claimant. Notwithstanding any tolling provided by law, the applicable statutes of limitation and repose on any and all Claims relating to the Alleged Defects shall be tolled (i) from the completion of the initial inspection and/or testing until (a) Respondent's written notice of election to repair, or (b) the expiration of sixty (60) days, whichever is sooner; and (ii) from the

date of any written notice of election to repair by Respondent until sixty (60) days after substantial completion of the repairs. This tolling applies to any and all Claims relating to Alleged Defects for which Claimant has given written notice pursuant to subsection 21.4.2 (regardless of whether Respondent has elected to repair none, some or all of the Alleged Defects). If the Respondent elects to repair some or all of the Alleged Defects, then (i) Respondent has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit the Respondent from making repairs; and (ii) until after the substantial completion of the repairs (a) the Claimant shall not file or pursue final binding arbitration (but may pursue mediation), and (b) if the Claimant is the Association, the Claimant shall not undertake the procedures for a consensus vote for Association action set forth in subsection 21.5.4. With any notice of election to repair, Respondent shall provide to Claimant a list of the Alleged Defects that Respondent has elected to repair, a detailed explanation of the repair work to be performed and the reasonably expected completion date for the repairs. The notice shall also include the name of any contractors the Respondent intends to employ for the repairs. Claimant shall promptly cooperate with the Respondent to schedule the repairs and provide reasonable access to the Project (including Common Elements and Units) for the repairs.

(3) For the purpose of exercising the rights to inspect, cure, correct and repair set forth above in subparagraphs 21.4.4(1) and 21.4.4(2), Declarant reserves for itself, its designees, the Association and its designees, a perpetual nonexclusive easement of access throughout the Project (including Common Elements and Units) to the extent reasonably necessary to exercise such rights.

(4) Within ten (10) days after receipt of the Respondent's notice to repair, a Claimant may deliver to the Respondent a written objection to the proposed repair if the Claimant believes in good faith that the proposed repairs will not remedy the Alleged Defect. The Respondent may elect to modify the proposal in accordance with the Claimant's objection, or may proceed with the scope of work set forth in the original proposal.

(5) If the Respondent fails to send a notice to repair or otherwise strictly comply with this Section 21.4.4 within the specified time frames, or if the Respondent does not complete the repairs within the time set forth in the notice to repair, the Claimant shall be released from the requirements of this Section 21.4.4 and may proceed with the formal procedures set forth in Section 21.5 below. Notwithstanding the foregoing, if the Respondent notifies the Claimant in writing before the stated completion date that the repair work will not be completed by the completion date, the Respondent shall be entitled to one reasonable extension of the completion date.

(6) The Respondent shall notify the Claimant when repairs have been completed. The Claimant shall have ten (10) days following the completion date to have the work inspected to verify that the repairs are complete and satisfactorily resolved the Alleged Defect. A Claimant who believes in good faith that the repairs made do not resolve the Alleged Defect may proceed with the formal procedures set forth in Section 21.5 below.

(7) With respect to areas of repair work undertaken by the Respondent pursuant to these Claims Procedures, the Respondent will conduct daily clean-up and render the work site each night in a safe and orderly condition and, at the completion of the repair work, shall restore the affected areas to substantially the same condition in which they existed prior to the repair, subject to any additional improvements or alterations involved with the repair. The specific materials and workmanship related to the repair work performed by the Respondent shall be warrantied against material defects for a period of one (1) year, which warranty shall be in addition

to any express warranties on the original work and shall be subject to the same terms and conditions of the original express warranty, but which repair work shall not be construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104.

(8) Any Alleged Defect discovered after repairs have been completed shall be subject to the same requirements of this Article if the Respondent did not have notice or an opportunity to repair the new Alleged Defect.

21.4.5 No Requirement for Final Settlement to Begin Repairs; Settlement Proposal. The informal Claims Procedures set forth in this Section 21.4 are for the purpose of encouraging early resolution of Claims and no formal written settlement or other agreement shall be required for inspection and corrective work to occur pursuant to Section 21.4.4 above. No Party shall be deemed to have waived any rights or Claims by reason of such corrective work, and the Claimant shall be entitled to monitor the effectiveness of the corrective measures instituted. Alternatively, if the Respondent desires a formal settlement agreement before commencing corrective measures or other action to resolve the subject matter of the Claim, the following Claims Procedures may be employed:

(1) Within thirty (30) days following completion of the inspection process, the Respondent may give Claimant written notification of its settlement proposal, including, in the case of a proposal to remedy a Defect Claim, a report of the scope, findings and results of the inspection, the damage caused by the Alleged Defect and a description of and a timetable for the work necessary to remedy the Alleged Defect.

(2) Within fifteen (15) days after its receipt of Respondent's settlement proposal, Claimant shall notify Respondent of its acceptance or rejection thereof. Failure to give such notice shall be deemed to be a rejection of the proposal

(3) If the settlement proposal for remedial work is accepted, Claimant and Respondent shall endeavor to document the settlement proposal in writing within thirty (30) days after acceptance, which settlement shall be signed by the Parties in the manner described in Section 21.4.6 below.

21.4.6 Effect of Corrective Work. It is acknowledged and agreed by all Parties and by any guarantors, insurers and/or indemnitors of the Parties that any work conducted pursuant to Section 21.4.4 above (a) is in the nature of corrective or repair work and does not constitute nor shall be asserted or construed to be an "improvement" to real property for purposes of C.R.S. § 13-80-104, and (b) unless part of a written settlement agreement signed by the Claimant and each Respondent, does not constitute nor shall be asserted or construed to be a voluntary payment or assumption of a voluntary obligation without insurer consent under any applicable commercial general liability insurance policy.

21.4.7 Broad Construction. The Claims Procedures set forth in this Section 21.4 are designed to encourage the good faith resolution of a Claim or appropriate correction of improvements and the right of the Respondent to be heard and to inspect and correct shall be ongoing and construed liberally throughout all of the Claims Procedures set forth in this Article so as to permit the same, for example but not limitation, as there arise new issues, legal theories, engineering opinions, developments with insurers, and other developments and information, even if after the formal dispute resolution procedures commence as described below. Accordingly, the informal and formal dispute resolution procedures are anticipated to run concurrently from time to time and the Parties agree to reasonably, timely and in good faith cooperate with each other to respond to requests, to permit the rights set forth in these Claims Procedures and to facilitate the processes of these Claims Procedures toward the goal of a successful and voluntary resolution of Claims.

Section 21.5 Formal Notice and Association Consensus.

21.5.1 Formal Notice. At any time following the forty-five (45) day negotiation period described in Section 21.4.3 above (or following such longer period as the Parties may agree), the Claimant may provide written formal notice to each Respondent stating (i) the nature of the Claim, including if applicable a list of any alleged construction defects and a description, in reasonable detail, of the type and location of such defects, the damages claimed to have been caused thereby, and Respondent's role in the Claim, (ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises), (iii) the date on which the Claim first arose, and (iv) the specific relief and/or proposed remedy sought. Notwithstanding the foregoing or any contrary provision herein, the Claimant shall, in addition to complying with these Claims Procedures, follow the alternative dispute resolution procedures set out in the Construction Defect Action Reform Act, Colo. Rev. Stat. § 13-20-801 et seq., as it may be amended from time to time ("CDARA") and the procedures set forth in Colo. Rev. Stat. **§** 38-33.3-303.5 et seq. ("CCIOA Construction Defect Procedures") with respect to any Defect Claim, and the initial formal notice required under CDARA and required pursuant to Colo. Rev. Stat. **§** 38-33.3-303.5(1)(e) may be combined with the formal notice of Claim required by this Section 21.5.1.

Formal written notice as provided in this Section and the satisfaction of the Association Consensus Vote (defined below), if applicable, is required as an express condition to commence the resolution Claims Procedures set forth in Section 21.6, Section 21.7 and the Sections following, below.

21.5.2 Association Defect Claims. Notwithstanding any contrary provision herein, no formal notice of Claim under Section 21.5.1 (including, without limitation, a Notice of Claim under CDARA) may be further pursued by a Claimant (a) if the Claim is a Defect Claim which relates, in whole or in part, to the Common Elements (including Limited Common Elements) of the Project or to any portion of the Units that is the responsibility of the Association to maintain, repair, and replace or to any Defect Claim that the Association intends to assert on its own behalf or on behalf of Owners (referred to herein as an "Association Defect Claim"), and (b) unless and until the Claims Procedures set forth in this Section 21.5 below are satisfied. The Parties understand and agree that the Claims Procedures of this Section 21.5 are essential to the protection of individual Owners who may not understand the implications and effects of the assertion of an Association Defect Claim by the Association, including, without limitation, the possible impact of such Claim on sales of Units within the Project and/or the ability of Owners to borrow funds when an Owner's Unit is being pledged as collateral for the loan.

21.5.3 Power of Attorney to Association. The Association is hereby designated to act as the exclusive representative of all Owners who are members of the Association in asserting any Association Defect Claim, and each Owner does hereby appoint the Association to exclusively act as its power of attorney (which power shall be irrevocable) with respect to any Association Defect Claims, including the right to compromise and settle the same. No Owner shall assert an Association Defect Claim except through the Association.

21.5.4 Meeting and Consensus Vote for Association Action. Notwithstanding anything contained in these Claims Procedures to the contrary and in addition to any requirements prescribed by law, before asserting a Claim the Association shall do the following:

(1) The Board, following the approval of an Association Defect Claim by a majority of all of its directors, shall mail or deliver written notice to each Owner at the Owner's last-known address described in the Association's records and to each Respondent containing all of the information and disclosures required by Colo. Rev. Stat. **§** 38-33.3-303.5(1)(c) and, to the extent not required by such Statute, the following: (a) the manner in which the Association proposes to fund the cost of the Association Defect Claim, including any proposed special assessments or

use of reserves, (b) the anticipated duration of the Association Defect Claim, the likelihood of its success, and the risks to which the Association is exposed (e.g., an assessment of counter-claims and/or other potential liability to the Association), (c) a reasonable assessment and explanation of the anticipated impact of the Association Defect Claim on the marketability of Units for sale within the Project and the impact on the ability of Owners to refinance and buyers of Units to secure financing, explained for both during the pendency of the Association Defect Claim and after its resolution, together with a prominent statement advising Owners if it is concluded that any such impact does exist, (d) a prominent statement advising Owners that the existence of the Association Defect Claim may represent a material matter requiring legal disclosure to lenders, purchasers, auditors and/or other appropriate parties, and (e) providing proper notice for a meeting of Owners to be held not sooner than ten (10) days or longer than fifteen (15) days after such mailing, at which Owners shall discuss (but not yet vote) on whether to approve the Association Defect Claim as described in Section 21.5.4(2) below. A failure to hold the meeting within this time period voids the subsequent vote. A quorum is not required at the meeting. Respondents will be invited to attend and will have an opportunity to address the Owners concerning the Association Defect Claim as required by Colo. Rev. Stat. § 38-33.3-303.5(1)(c).

(2) The Association Defect Claim must be approved and authorized by the affirmative written vote during the voting period, which voting period commences upon the conclusion of the Owner meeting and extends to the date falling ninety (90) days after the date of the notice described in Section 21.5.4(1) above (or, if earlier, the date when the Association determines that the Association Defect Claim is either approved or disapproved) (the "Voting Period"), by delivery of a written ballot or other written form of approval approved by the Board directing the specific vote of the Owner (but not by proxy granting discretion to the proxy holder as to how to vote), of Owners holding at least a majority of the Total Voting Power in the Association (the "Association Consensus Vote").

(3) The Association Consensus Vote must be obtained before the expiration of the Voting Period; otherwise the Owners shall be deemed to have declined to provide their approval of Association Defect Claim.

(4) Notwithstanding any contrary provision or lack of provision herein, the Association shall fully and timely comply with all requirements of Colo. Rev. Stat. § 38-33.3-303.5, et seq., as supplemented by this Section 21.5. Further, notwithstanding this Section 21.5.4(4), the notice to Owners, meeting and vote set forth in this Section 21.5.4(4) is not required for an Association to proceed when the Association is the contracting party for the performance of labor or purchase of services or materials.

21.5.5 Limit on Director and Officer Liability. No director or officer of the Association shall be liable to any person or entity for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for an Association Defect Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was not acting in bad faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

21.5.6 Tolling. All statutes of limitation and repose applicable to an Association Defect Claim shall be deemed tolled as provided in Colo. Rev. Stat. § 38-33.3-303.5 et seq.

Section 21.6 Mediation.

21.6.1 Following the formal written notice discussed in Section 21.5.1 above and, if applicable, the approval of the Association Consensus Vote within the Voting Period, the Claimant shall

have thirty (30) days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Gunnison County, Colorado unless otherwise agreed by the Parties. A mediator shall be selected no later than forty-five (45) days after the Claimant has given notice to the Respondent of its submittal to mediation and, if the Association is a Party and the Parties are unable to agree on a mediator, one shall be chosen by the Judicial Arbiter Group ("JAG"). Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

21.6.2 If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than the Claimant.

21.6.3 If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to submit the Claim to binding arbitration as provided below.

21.6.4 Any settlement of the Claim through mediation or through negotiation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the Claims Procedures set forth in this Article. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

Section 21.7 Final and Binding Arbitration. Upon termination of mediation as provided in Section 21.6.3 above, if Claimant desires to pursue the Claim, Claimant shall have forty-five (45) days to deliver an arbitration notice to Respondent(s) and to initiate final, binding arbitration of the Claim under the auspices of the JAG in Denver, Colorado. If any Claim is not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, then the Claim shall be deemed waived and abandoned, and Respondent(s) shall be released and discharged from any and all liability to Claimant arising out of any such Claim. The following arbitration procedures shall be applicable to each Claim that is arbitrated:

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

21.7.2 No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all Parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any Party objects to the service of any arbitrator with fourteen (14) days after receipt of the Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

21.7.3 The arbitration shall be presided over by a single arbitrator. Notwithstanding any other provision of this Section 21.7, if the Parties are unable to agree upon an arbitrator to resolve a Claim, they shall request from the JAG a list of qualified arbitrators. Promptly following their receipt of the list, the Parties shall meet in person or by telephone and shall follow the JAG procedures of ranking and striking

names so as to determine the person who shall serve as the arbitrator. The cost of the list shall be split equally by the Parties.

21.7.4 The arbitrator shall hold at least one hearing in which the Parties, their attorneys and expert consultants may participate. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in the County in which the Project is located unless otherwise agreed by the Parties.

21.7.5 Discovery shall be limited to document disclosures as provided by the JAG, and no other discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the Parties. The manner, timing and extent of any discovery shall be committed to the arbitrator's sound discretion, provided that under no circumstances shall the arbitrator allow more depositions or interrogatories than permitted by the presumptive limitations set forth in Federal Rules Of Civil Procedure 30(a)(2)(A) and 33(a). The arbitrator shall levy appropriate sanctions, including an award of reasonable attorneys' fees, against any Party that fails to cooperate in good faith in discovery agreed to by the Parties or ordered by the arbitrator pursuant to this Section.

21.7.6 The arbitrator may, in his or her reasonable discretion, permit the Parties to submit pre-hearing briefs, post-hearings briefs and/or proposed findings of fact and conclusions of law. The arbitrator shall also have authority to establish reasonable terms regarding inspections, destructive testing and retention of independent consultants, if applicable.

21.7.7 The Parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Party may have liability with respect thereto, all Parties agree that the third parties may be joined as additional Parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all such arbitrations. By way of example only and not by limitation, in the event of an Alleged Defect, Declarant would have the right to join in the arbitration any design professional, contractor, subcontractor or other third party whose acts or omissions allegedly caused or contributed to the damages alleged by the Claimant.

21.7.8 The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than thirty (30) days from the close of the hearing, unless otherwise agreed by the Parties. The arbitration award shall be in writing and shall be signed by the arbitrator.

21.7.9 Any issue about whether a Claim is covered by this Article shall be determined by the arbitrator. Notwithstanding anything to the contrary, if a Party contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial or on appeal, to the non-contesting Party.

21.7.10 The arbitrator shall apply the substantive law of Colorado and may award injunctive relief or any other remedy available in Colorado.

21.7.11 The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in the County in which the Project is located in accordance with applicable law and judgment obtained thereon, and execution may issue. If any Party objects to entry of judgment upon any arbitration award entered pursuant to this Section 21.7.11, the Party that substantially prevails in any ensuing dispute concerning the entry of judgment upon such award shall be entitled to all reasonable attorneys' fees and costs incurred in the enforcement of the award.

21.7.12 The fees and costs of the arbitration, including without limitation the arbitrator and its consultants, shall be borne equally by the Parties.

21.7.13 Except as may be required by law or for confirmation of an arbitration award, neither a Party nor an arbitrator may disclose the existence or contents of any arbitration or arbitration award without the prior written consent of all Parties to the Claim.

Section 21.8 Amendments to this Article; Standing to Enforce. Notwithstanding anything to the contrary contained in this Declaration or any of the Association Documents, the terms and provisions of this ARTICLE 21 inure to the benefit of Declarant, are enforceable by Declarant, and SHALL NOT EVER BE AMENDED OR NULLIFIED WITHOUT THE WRITTEN CONSENT OF DECLARANT and without regard to whether Declarant owns any portion of the Project at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 21 ARE A SIGNIFICANT INDUCEMENT TO THE DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS ARTICLE, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. Any amendment made without the requisite written consent of Declarant shall be null and void and shall have no effect. Further, all employees and agents of Declarant and all contractors, subcontractors, architects, engineers and other development professionals associated with the design or construction of any portion of the Project (each a "Third Party Beneficiary") are third-party beneficiaries of this Article and of the terms and conditions contained herein, including without limitation the requirement for binding arbitration, and any Third Party Beneficiary has standing to enforce the terms and conditions of this Article, including without limitation to compel binding arbitration.

Section 21.9 Reformation. The Parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving Claims. Accordingly, they recognize that an essential part of the Declaration is this Article and its agreement between and among the Parties to provide for the submission of all Claims to informal negotiation and correction efforts, mediation and final and binding arbitration. Therefore, if any court or arbitrator concludes that any provision of these Claims Procedures is void, voidable or otherwise unenforceable, the Parties understand and agree that the court or arbitrator shall reform each such provision to render it enforceable, but only to the extent absolutely necessary to render the provision enforceable and only in view of the Parties' express desire that the merits of all Claims be resolved only by arbitration and, to the greatest extent permitted by law, in accordance with the principles, limitations and procedures set forth in these Claims Procedures.

Section 21.10 Notices; Computation of Time. All notices given or required by these Claims Procedures shall be in writing and shall be deemed given and received (a) when hand delivered to the intended recipient by whatever means; (b) three business days after the same is deposited in the United States mail, with adequate postage prepaid and sent by certified mail, return receipt requested, or (c) one business day after the same is deposited with an overnight courier service of national reputation, with the delivery charges prepaid. In the event any date called for herein falls on a Saturday, Sunday or legal holiday for which U.S. mail service is not provided, such date shall be extended to the next business day following such Saturday, Sunday or holiday.

## ARTICLE 22 DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 22.1 Term. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until this Declaration is terminated pursuant to the terms hereof.

Section 22.2 Amendment of Declaration. This Declaration may be amended as follows:

(a) General Amendments. Except as otherwise expressly permitted or restricted by this Section 22.2 and as provided for in ARTICLE 21, this Declaration may be amended by a vote or agreement of a Majority of Owners. To the extent the proposed amendment involves an issue subject to Class Voting, a majority of a quorum of the Owners in the affected Class will also be required, such that the Majority of Owners must include a majority of a quorum of the Owners in such Class. Notwithstanding the foregoing provision, the percentage of the Total Voting Power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative voting power prescribed for action to be taken under that clause or provision. The Association and the Owners may not, while any Reserved Declarant Right exists, amend this Declaration in any matter that restricts or reduces Declarant's rights or increases or expands Declarant's obligations or liabilities hereunder without Declarant's written consent.

(b) Permitted Use Amendments. Except to the extent otherwise expressly permitted or required in this Declaration, this Declaration may be amended to change the uses to which any Unit is restricted only by a vote or agreement of Owners holding at least sixty-seven percent (67%) of the Total Voting Power.

(c) Allocated Interest Amendments. Except to the extent otherwise expressly permitted or required in this Declaration or under the Act, this Declaration may be amended to increase Reserved Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit only by a vote or agreement of Owners holding at least sixty-seven percent (67%) of the Total Voting Power, including sixty-seven percent (67%) of the voting power allocated to Units not owned by Declarant.

(d) Reserved Amendment Rights. To the extent that this Declaration and the Act expressly permit or require amendments that may be executed by Declarant or by the Association, this Declaration may be amended by amendments executed solely by Declarant or solely by the Association. To the extent not prohibited by the Act, Declarant may execute any amendment required or necessary to comply with Applicable Law and any amendment required or appropriate to comply with the secondary mortgage market or Colorado state regulatory requirements. In the event of an amendment by Declarant in connection with the exercise of the Reserved Declarant Rights pursuant to the terms of this Declaration, recording of such amendments to this Declaration and any associated supplement to the Map in the Records shall automatically:

(i) vest in each existing Owner the reallocated Allocated Interests appurtenant to such Owner's Unit; and

(ii) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of such an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as expanded. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 22.3 Amendment of Other Condominium Documents. The Articles of Incorporation and Bylaws may be amended in accordance with the terms of such documents and the Nonprofit Act. The Rules and Regulations may be amended as determined by the Board of Directors. While any Reserved Declarant Right exists, the Condominium Documents may not be amended in any matter that restricts or reduces Declarant's rights or increases Declarant's obligations or liabilities thereunder without Declarant's written consent.

Section 22.4 Execution of Amendments; Expenses. Any amendment shall be prepared, executed and recorded either by Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of: (a) any Owners desiring an amendment as provided for in this Declaration or the Act; (b) Declarant, to the extent the right to amend this Declaration is reserved to Declarant and exercised by Declarant; or (c) in all other cases by the Association as a Common Expense.

Section 22.5 When Modifications Permitted. Notwithstanding the provisions of Section 22.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 22.6 Recording of Amendments. Any amendment to this Declaration made in accordance with this ARTICLE 22 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of Declarant or the Secretary of the Association, as applicable, stating that the required vote of Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable), if any, were obtained and are on file in the office of the Association or were not required to be obtained pursuant to this Declaration or the Act. The amendment must be indexed in the grantee's index in the name of the Project and the Association and in the grantor's index in the name of each Person or entity executing the Amendment.

Section 22.7 Rights of Declarant. Notwithstanding anything to the contrary contained herein, and to the extent permitted by the Act, no amendment or modification to, or impairment of any of the rights contained in, any of ARTICLE 14, ARTICLE 15, ARTICLE 21, Section 22.4 and Section 22.5, this Section nor any provision of this Declaration reserving or creating any Reserved Declarant Right shall be effective or enforceable without the prior consent of Declarant during the longer of the Period of Declarant Control or the period in which Declarant continues to hold Reserved Declarant Rights.

Section 22.8 Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Owners or the Association as a condition to the effectiveness of those actions as provided in ARTICLE 19 entitled "Mortgagee Protections."

Section 22.9 Termination of the Project. The Project may only be terminated as provided in the Act.

## ARTICLE 23 MISCELLANEOUS

Section 23.1 Enforcement. The provisions of the Act and the provisions of the Condominium Documents may be enforced by any Person subject to this Declaration through proceedings at law or in equity against any Person subject to this Declaration who has violated or is violating or attempting to violate such provisions, all as more specifically set forth in the Act.

Section 23.2 Notices. All notices, demands, or other communications required or permitted to be given hereunder shall be in writing, and any and all such items shall be deemed to have been duly

delivered upon personal delivery; upon actual receipt, in the case of notices forwarded by certified mail, return receipt requested, postage prepaid; as of 12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service; or as of the third business hour (a business hour being one of the hours from 8:00 a.m. to 5:00 p.m. on business days) after transmitting by telecopier, facsimile, or electronic mail.

Section 23.3 Nonwaiver. Failure by Declarant, the Association, or any Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 23.4 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of this Declaration by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation shall be construed in a manner as to make this Declaration valid and enforceable.

Section 23.5 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 23.6 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 23.7 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control.

Section 23.8 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 23.9 Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado, and specifically, the provisions of the Act and not the general common law (including remedies) of tenancy-in-common.

Section 23.10 Third Party Beneficiary. This Declaration is submitted, imposed, and declared solely for the benefit of Declarant, Owners, First Mortgagees, and their respective successors, assigns, heirs, executors, administrators, and personal representatives. No party shall be deemed a third party beneficiary of this Declaration.

[Remainder of Page Intentionally Left Blank]

Executed as of the ___ day of _____, 20[__].

9380 Real Estate, LLC, a Texas limited liability company

By: _____

Name: _____

Title: _____

STATE OF COLORADO )

) ss.

COUNTY OF GUNNISON )

The foregoing instrument was acknowledged before me this _____ day of _____, 20[__], by _____, as _____ of 9380 Real Estate, LLC, a Texas limited liability company.

Witness my hand and official seal.

_____
NOTARY PUBLIC

My Commission Expires: _____

**MORTGAGEE'S CONSENT**
**([_____])**

The undersigned hereby consents to the amendment, restatement, and replacement of the Original Declaration in its entirety and to the execution and recording of the foregoing Declaration and hereby subordinates the lien of its Deed of Trust, effective [_____] and recorded [_____] at Reception No. [_____], as amended from time to time, in the records of Gunnison County, Colorado, to this Declaration and the effect hereof.

Dated this ___ day of [_____].

[_____] BANK, a national banking association

By:_____

Name:_____

Title:_____

**ACKNOWLEDGEMENT**

STATE OF [_____] )

) ss.

COUNTY OF [_____] )

The foregoing instrument was acknowledged before me this ___ day of [_____], by _____, as _____of [_____] Bank, a national banking association.

Witness my hand and official seal.

_____
NOTARY PUBLIC

My Commission Expires: _____

## CERTIFICATE OF COMPLETION

The undersigned, an independent licensed or registered engineer, surveyor or architect, hereby certifies that all structural components of the Gothic Road Community located in Mt. Crested Butte, Colorado, as more particularly described in the Declaration for Gothic Road Community, are substantially complete as required by Section 38-33.3-201 of the Colorado Common Interest Ownership Act.

Dated this ___ day of [_____].

[_____], a Colorado corporation

By:_____

Name:_____

Title:_____

## ACKNOWLEDGEMENT

STATE OF [_____] )

) ss.

COUNTY OF [_____] )

The foregoing instrument was acknowledged before me this ___ day of [_____], by _____, as _____of [_____], a Colorado corporation.

Witness my hand and official seal.

_____
NOTARY PUBLIC

My Commission Expires: _____

**Exhibit A**

**To**

**Declaration**

**LEGAL DESCRIPTION**

The Property referred to in the Declaration is described as follows:

**[to be inserted]**

Town of Mt. Crested Butte, County of Gunnison, State of Colorado.

**Exhibit B**

**to**

**Declaration**

**TABLE OF ALLOCATED INTERESTS**

[to be inserted]

**Exhibit C**

**to**

**Declaration**

**EASEMENTS AND LICENSES OF RECORD**

1. Any and all unpaid taxes and assessments and any unredeemed tax sales.

2. [to be inserted from title commitment]

3. Easements, conditions, covenants, restrictions, reservations, notes, rights of way and all other matters as shown on the Map of Gothic Road Community, to be filed on the same date as the recording of this Declaration.

**Exhibit D**

**To**

**Declaration**

**ISSUES FOR CLASS VOTING**

COMMERCIAL CLASS ISSUES:

The issues specified below are deemed to relate solely to the Commercial Units or Limited Common Elements appurtenant only to the Commercial Units, and actions or determinations on such issues shall be decided by the Owners of the Commercial Units, voting as a Class to the extent such Owners are otherwise allowed to vote on such issues pursuant to the Act or the Condominium Documents.

(a) any issue expressly relating only to the Commercial Units or Commercial Unit Limited Common Elements;

(b) any Rules and Regulations applicable only to the Commercial Units or the Owners of the Commercial Units; and

(c) any Assessments or items shown on the Budget that are payable only by the Owners of the Commercial Units.

RESIDENTIAL CLASS ISSUES:

The issues specified below are deemed to relate solely to the Residential Units or the Limited Common Elements appurtenant only to the Residential Units and actions or determinations on such issues shall be decided by the Owners of Residential Units, voting as a Class to the extent Residential Unit Owners are otherwise allowed to vote on such issues pursuant to the Act or the Condominium Documents.

(a) any issue expressly relating only to the Residential Units or Residential Unit Limited Common Elements;

(b) any Rules and Regulations applicable only to the Residential Units or Owners of Residential Units; and

(c) any Assessments or items shown on the Budget that are payable only by Owners of Residential Units.

**Exhibit E**

**To**

**Declaration**

**LEGAL DESCRIPTION OF EXPANSION PROPERTY**

[Open]