

AMENDED AND RESTATED
CONDOMINIUM DECLARATION
FOR
SAN MORITZ CONDOMINIUMS

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**AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
SAN MORITZ CONDOMINIUMS**

RECITALS

WHEREAS, J A B C O DEVELOPERS, INC., a Kansas corporation (the "Declarant") recorded the Condominium Declaration for San Moritz Condominiums ("Originating Declaration") on March 2, 1972, in Book 437, at Page 141, Reception No. 287985, in the records of the Clerk and Recorder for the County of Gunnison. The Originating Declaration was subsequently amended by the Amendment to Condominium Declaration for San Moritz Condominiums ("Amendment") on March 6, 1972, in Book 437, at Page 194, Reception No. 288020, in the records of the Clerk and Recorder for the County of Gunnison, and by the First Supplement to Condominium Declaration for San Moritz Condominiums ("First Supplement") on July 3, 1973, in Book 455, at Page 42, Reception No. 294985, in the records of the Clerk and Recorder for the County of Gunnison. The Originating Declaration, Amendment, and First Supplement are collectively referred to as the "Original Declaration." The Declarant submitted to the Original Declaration that real property described therein, which is attached hereto as Exhibit A and incorporated by this reference.

WHEREAS, Section 19 of the Originating Declaration provides that the Original Declaration may be amended if owners representing an aggregate ownership interest of seventy-five percent (75%), or more, of the general common elements, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all units unanimously consent and agree to such amendment by instrument(s) duly recorded.

WHEREAS, pursuant to Colorado Revised Statutes § 38-33.3-217(1), any provision in a common interest community declaration that purports to require the affirmative vote or agreement of more than sixty-seven percent (67%) of the members to whom the votes are allocated is void as contrary to public policy and any such provision shall be deemed to specify a percentage of sixty-seven percent (67%).

WHEREAS, Owners representing an aggregate ownership interest of sixty-seven percent (67%), or more, of the general common elements, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all units, desire to amend and restate the Original Declaration in its entirety, by virtue of this Amended and Restated Condominium Declaration for San Moritz Condominiums ("Declaration").

WHEREAS, this Declaration does not change the Allocated Interests as set forth in the Original Declaration.

**ARTICLE I.
DECLARATION AND SUBMISSION**

Section 1.1 Declaration. The Property described in Exhibit A shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and the heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. This Declaration shall supersede and replace in their entirety all prior recorded declarations, amendments, and supplements thereto. It is the intent that this Declaration shall be the only condominium declaration governing the Property unless and until it is amended pursuant to the provisions herein.

**ARTICLE II.
DEFINITIONS**

The following words when used in this Declaration shall have the following meanings:

Section 2.1 Agency. Any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran's Affairs ("VA"), Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac"), or any similar entity or agency that purchases, underwrites, insures or guarantees residential mortgages.

Section 2.2 Allocated Interests. The undivided interest in the Assessments and votes in the Association allocated to each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 Percentage Share of Common Expenses: Subject to the Board's right to assess expenses as provided in Sections 11.3, 11.5 and 11.6, the allocated interests in a Unit's share of the Common Expenses is determined by the percentage equivalent to a fraction, the numerator of which is one and the denominator of which is the total number of Units in the Project. The percentage share of Common Expenses are set forth in Exhibit B. Notwithstanding the foregoing, assessments and other expenses attributable to any Unit owned by the Association and used as management or administrative offices or as a residence of a resident Manager for the Project shall be Common Expenses of the Association and allocated to the remaining Owners in accordance with their percentage share of Common Expenses calculated as if such Unit were not included in the denominator for calculation of percentage share of Common Expenses.

2.2.2 Percentage Share of Ownership of Common Elements: Each Owner's percentage share of ownership of Common Elements is determined by a fraction, the numerator of which is one and the denominator of which is forty-eight (48). The percentage share of ownership of Common Elements are set forth in Exhibit B.

2.2.3 Voting: The Owners of each Unit shall be entitled to one (1) vote in the affairs of the Association, except that Units owned by the Association shall not be entitled to vote.

No Owner shall be entitled to vote in any matter who is not in Good Standing with the Association. All Owners in Good Standing shall be entitled to vote in accordance with the provisions of Section 5.3 herein.

Section 2.3 Articles. The Articles of Incorporation of San Moritz Condominium Association, a Colorado nonprofit corporation and any amendments that may be made to those Articles from time to time.

Section 2.4 Annual Assessment. The Assessment levied pursuant to an annual budget.

Section 2.5 Assessments. The Annual, Special and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a common expense liability as defined under the Act.

Section 2.6 Association. San Moritz Condominium Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 Association Documents. This Declaration, the Articles of Incorporation, the Bylaws, the Map, and Rules.

Section 2.8 Bylaws. The Bylaws adopted by the Association, as amended from time to time.

Section 2.9 Clerk and Recorder. The office of the Clerk and Recorder in the County of Gunnison, Colorado.

Section 2.10 Common Elements. All portions of the Project except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interest set forth in Section 2.2 above and consist of General Common Elements and Limited Common Elements.

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

- a. all of the land, and landscaping, grass, shrubbery, trees, plants, gardens, and related improvements;
- b. all foundations, columns, girders, beams and supports of the structures making up the Project;

c. the exterior walls of the structures making up the Project; the main or bearing walls within the structures making up the Project; the roof of the Project; and all portions of the walls, floors or ceilings in a structure that are not part of the Unit as described in Section 2.28 below;

d. the unassigned yards, sidewalks, walkways, parking areas, roads, driveways, paths, and related facilities on the Property;

e. except as otherwise specifically provided herein, all utility service and maintenance rooms, fixtures, apparatus, equipment, installations and facilities for power, light, gas, telephone, television, hot water, cold water, heating, or similar utility service or maintenance purposes, including furnaces, pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and in general, all apparatus, installations, and facilities, which serve more than one Unit; and

f. in general, all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

2.10.2 Limited Common Elements. Those parts of the Common Elements which are either limited to or reserved in this Declaration, the Map, or by action of the Association, for the exclusive use of an Owner or are limited to and reserved for the common use of more than one but fewer than all Owners. Without limiting the foregoing, any portion of a chute, flue, duct, pipe, drain, wire, conduit, bearing wall, bearing column, or other fixture which lies completely or partially within and/or completely or partially outside the designated boundaries of a Unit that serves 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 General Common Elements is a Limited Common Element allocated to the Units served. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, terraces, fireplace flues accessible from the interior of a Unit, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Without limiting the foregoing, the Limited Common Elements shall include parking spaces and storage spaces that may be designated as Limited Common Elements on the Map, or which are assigned or appurtenant to a particular Unit, and utility, heating, air conditioning, and domestic hot water equipment located outside of a Unit but serving a Unit to the exclusion of other Units. The horizontal boundaries of porches, balconies, decks, patios, and terraces shall be the same as the interior horizontal boundaries of the Units to which such Limited Common Elements are appurtenant, unless the Map specifically defines other horizontal boundaries.

Section 2.11 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be Common Expenses by the Board.

Section 2.12 County. The County of Gunnison, State of Colorado.

Section 2.13 Declaration. This Declaration and the Map, and amendments and supplements thereto.

Section 2.14 Eligible Mortgagee. A First Mortgagee who has notified the Association, in writing, of its name and address and that it holds a First Mortgage on a Unit. The notice must include the address of the Unit on which it has a First Mortgage. Such notice shall include a request that the First Mortgagee be given the notices and other rights described in Articles 16 and 17.

Section 2.15 Board of Directors or Board. The governing body of the Association, duly elected pursuant to the Bylaws of the Association; the "Executive Board" as the term is used in the Act.

Section 2.16 First Mortgage. A Mortgage that has priority of record over all other recorded liens, except liens for taxes or other liens that are given priority by statute.

Section 2.17 First Mortgagee. Any person named as a Mortgagee in any First Mortgage, or any successor to the interest of any such person under such Mortgage as shown in the records of the County.

Section 2.18 Good Standing. An Owner who is no more than thirty (30) days late in the payment of any Assessments or is current on an Association approved payment plan, and who is in compliance with the terms of the Association Documents, and who has none of his, her or its membership privileges suspended.

Section 2.19 Manager. A person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Board may authorize from time to time.

Section 2.20 Map. The Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map is incorporated herein by reference as if set forth in its entirety.

Section 2.21 Member. Any person or entity that holds membership in the Association. The Owners of each Unit shall hold membership in the Association.

Section 2.22 Mortgage. Any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.23 Mortgagee. Any person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under such Mortgage.

Section 2.24 Owner. The owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

Section 2.25 Permitted User. Members of the Owner's family, or the Owner's tenant, employee, invitee, or licensee, or the employee, invitee, or licensee of the tenant.

Section 2.26 Project. The common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

Section 2.27 Rules. Rules, regulations, procedures, policies, and guidelines adopted by the Board.

Section 2.28 Unit. The fee simple interest and title in and to an individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors, and ceilings, together with the appurtenant interest in the Common Elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the interior finished surfaces thereof are a part of the Units, except as expressly stated to be part of the General Common Elements defined above. The boundaries of the Unit are depicted on the Map. The Unit shall include any heating and refrigerating elements or related equipment, utility lines, and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, or other utility services to the Unit and located within the unfinished walls, ceilings, and floors. For purposes of this definition of Unit, the terms set forth below shall have the meanings ascribed:

2.28.1 Unfinished Perimeter Wall. The studs, supports and other wooden, metal, or similar structural materials that constitute the interior face of a wall of a Unit, but not including any lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, or other materials.

2.28.2 Unfinished Ceiling. The beams, joists, and wooden or other structural materials that constitute the ceiling of a Unit, but not including any lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, or other materials.

2.28.3 Unfinished Floor. The beams, floor joists, floor deck material, and concrete that constitute the floor of a Unit, but not including any finished flooring or other materials.

ARTICLE III. NAME, DIVISION INTO UNITS

Section 3.1 Name. The name of the Project is San Moritz Condominiums. The Project

is a Condominium pursuant to the Colorado Condominium Ownership Act ("Act"), and is subject to certain statutory provisions of the Colorado Common Interest Ownership Act ("CCIOA") and the Colorado Revised Nonprofit Corporation Act ("Nonprofit Act"). References herein to CCIOA shall be deemed to mean those provisions of CCIOA that, by its provisions, apply to condominium communities that were formed before July 1, 1992, but not otherwise. By adoption of this Declaration, the Association is not electing to be treated as a common interest community under the provisions of CCIOA.

Section 3.2 Association. The name of the Association is San Moritz Condominium Association.

Section 3.3 Number of Units. The number of Units in the Project is forty-eight (48).

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

Section 3.5 Description of Units.

3.5.1 Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, and shall be inseparable and may be transferred, leased, devised, or encumbered only as one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

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

Section 3.6 Separate Parcels and Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Project other than Units shall be deemed a parcel. The lien for taxes assessed to any Unit shall be confined to such Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Unit or the Common Elements.

ARTICLE IV. RESTRICTIONS ON USE OF UNITS

Section 4.1 Restrictions Imposed. All of the Units shall be held, conveyed, used,

improved, occupied, owned, resided upon, and secured subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Board shall have the power to adopt, amend, repeal and enforce more specific and restrictive Rules as the Board deems to be reasonable and necessary to carry out the intent of this Declaration.

Section 4.2 Residential Use of Units. Each Unit shall be used and occupied only as a residence, operating on a nonprofit, noncommercial basis and for home operated businesses, so long as such business (i) is allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, smell, or vibration from the exterior of the Unit, (iii) does not increase traffic or parking requirements within the Project; and (iv) does not increase the insurance obligations or premiums of the Association. Notwithstanding the foregoing, any Manager hired by the Association may conduct management and administrative activities from within one or more Units. Leasing of Units, subject to the provisions of Section 4.3, shall be considered a residential purpose so long as the tenants reside in such Unit.

Section 4.3 Rental Restrictions. Subject to the remaining provisions of this Section 4.3, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, without otherwise obtaining written consent from the Board, that (i) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Rules are provided to the Lessee with the lease; (ii) no Unit may be sublet; (iii) a Unit may be leased only for the uses provided herein; and (iv) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. The Association may adopt Rules with respect to rental of Units to non-Owners. As used herein, the term lease shall mean any agreement or arrangement for occupancy of the Unit by persons other than the Owner. The following rental restrictions apply to all Units:

4.3.1 Tenants may be procured through the Association ("Association Tenants") or through the Owner ("Owner Tenants").

4.3.1.1 For Association Tenants, Owners agree that the Association shall rent, lease, operate, and manage the rented Units.

(1) The Association shall:

- A. Separately account for all income and expenses related to the rental of the Unit by the Association. Association will provide Owner with a separate operating statement for rental income and related expenses, and maintenance, housekeeping and other services performed in the rented Unit.
- B. Use diligence in the management of the rented Unit and furnish services for the renting, leasing, operating and managing of the rented Unit.

- C. Produce monthly statements of receipts, expenses and charges, and remit to Owner rental income less expenses on a monthly basis. In the event the expenses shall be in excess of the rental income collected by Association, Owner hereby agrees to pay such excess promptly to Association. A service charge of 2% per month will be assessed on for accounts that are thirty (30) days past due.
- D. Deposit all rental income collected for Owner (less sums properly deducted or otherwise provided herein) in a federally-insured trust account in a national or state institution qualified to engage in the banking or trust business, separate from Association's operating account. However, Association will not be held liable in the event of bankruptcy or failure of a depository.
- E. Advertise and promote the rental of units and obtain tenants executing monthly, weekly, or daily tenancies and leases and extensions and renewals. Association shall have the right to set rental rates from time to time, including special rates for group, convention, and off-season use as appropriate.
- F. Engage, supervise, and discharge persons as necessary for servicing, repairing, and maintaining the rented Unit, to include cleaning, trash disposal, and providing cleaning supplies, linens, towels, soaps, and other items. Association will provide the above services and Owner agrees to reimburse Association for the costs of providing such cleaning and maintenance services. The cost of these services will be set each year by the Association as part of the budgeting process and will be reported to Owner at the annual Owners' Meeting or as soon thereafter as the next year's budgeting process allows.
- G. Maintain a rotating system for rental of those units for which it is responsible to provide equal tenancies for comparable units. It is understood, however, that Association must provide the tenant with the unit requested if the unit is available at the time period requested. Owner will be notified annually in writing of the rentable condition of the rented Unit and any improvements necessary to keep the rented Unit in comparable quality to other units. Units that are not improved as per the notice may be given a lower priority status for rentals. Association will provide any rental revenue information it has available upon Owner's request.
- H. Provide front office rental services including: performing check-in and check-out procedures, collection of rental deposits, collection of rental payments, payment of travel agent commissions and credit card charges, collection and remittance of all state, county, and city sales tax, reporting year-end tax information, use of fax and internet services, scheduling of maintenance services, scheduling of housekeeping services, scheduling of shuttle services and providing other concierge-type services.

(2) Owners shall:

- A. Give Association the power and authority to make or cause to be made and supervise repairs and alterations, to purchase supplies, and to pay bills therefore. Association agrees to secure the prior approval from Owner on all expenditures in excess of \$100.00 for any one item, except monthly or recurring operating charges and/or emergency repairs in excess of the maximum if, in the opinion of Association, such repairs are necessary to protect the property from damage or to maintain services to the tenants.
- B. Pay Association a Rental Assessment for Association's rental management services. The Rental Assessment will be adjusted up or down each year based on the anticipated costs and revenues for the coming year and the amount of the Rental Assessment will be provided at the annual Owners' Meeting or as soon thereafter as the budgeting process allows.
- C. Have all parties, including Owners, check into the rented Unit through the front office upon arrival so that the Association may determine the nature of the use of the Unit authorized by Owner, and to provide all parties with a parking permit displaying the Unit in which they are staying. The Association has the right to determine the occupancy status of all occupants and that they are authorized by Owner to be in the Unit.
- D. In the event Owner is or becomes thirty (30) days delinquent in the payment of any amounts due to Association for Assessments or other expenses specific to the Unit, authorize Association to deduct from rental income of the rented Unit an amount sufficient to pay such delinquent Assessments or other expenses.
- E. In the event an Association Tenant cancels a rental or otherwise forfeits a rental deposit, authorize Association to credit the deposit to Owner. Owners agree that Association has authority to apply any deposit being held for a tenant to any unit occupied by said tenant. Transferring of deposits will be done by Association in the best interest of the tenant.
- F. Provide Association, in writing, the dates of intended use of the Unit for (1) winter (ski) season, which runs from November through April, by no later than September 30 of each year, and (2) summer season, which runs from May through October, by no later than March 31 of each year. For rental purposes, it is in the best interest of Owner to send in the usage dates as early as possible as Association will begin booking units that are available as the rental requests are received. Association will provide Owner Calendars for reporting such use.

4.3.1.2 For Owner Tenants, Owners shall:

- A. Notify Association in advance of the specific details of the rental to Owner Tenants.**
- B. Have all parties, including Owners and guests, check into the Unit through the front office upon arrival so that the Association may determine the nature of the use of the Unit authorized by Owner, and to provide all parties with a parking permit displaying the Unit in which they are staying. The Association has the right to determine the occupancy status of all occupants and that they are authorized by Owner to be in the Unit.**
- C. Pay Association a Rental Assessment, based upon the scheduled rental rate, that is ten (10) percentage points less than the Rental Assessment described in Section 4.3.1.1(2)(B), to cover front office rental services for Owner Tenants, plus any expenses for services provided to or on behalf of Owner Tenants.**
- D. In the event an Owner knowingly or intentionally classifies an Owner Tenant as a guest of the Owner, as determined by the Board or manager in their sole discretion, pay Association one hundred percent (100%) of the Rental Assessment.**

Section 4.4 Right to Adopt Rules Regulating Units and Common Elements. Each Owner and Permitted User may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt Rules governing or restricting the use of the Units and the Common Elements, which may include, but not be limited to, the regulation or prohibition of smoking in a Unit or on the Common Elements or both. Each Owner and Permitted User, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such Rules. No Owner or Permitted User shall cause, or further, an obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements, without prior written consent of the Board, which consent may be granted or withheld in the Board's sole and absolute discretion. Nothing shall be added to, altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board which consent may be granted or withheld in the Board's sole and absolute discretion.

Section 4.5 Occupancy Restrictions. The following occupancy restrictions apply to all Units and to the Common Elements:

- 4.5.1 No offensive or unlawful use may be made of the Property. Owners and Permitted Users shall comply with and conform to all applicable laws and regulations of the United**

States, the State of Colorado and all other governmental ordinances, rules and regulations. No Unit shall be used for any purpose not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule. No portion of the Property may be used for the manufacture, storage or disposal of hazardous materials other than in reasonable quantities typically used for purposes of residential cleaning, maintenance and repair. Except for personal use as allowed by law, no portion of the Property may be used for the growing, cultivation, sale or dispensing of marijuana or any controlled substance.

4.5.2 Except as expressly permitted by this Declaration, no noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Unit or the Common Elements, nor shall anything be done, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit any nuisance or anything to be done by others that will unreasonably interfere with the rights, comforts or convenience of other Owners or Permitted Users. Determination of whether an activity violates this covenant shall be at the discretion of the Board or a committee appointed by the Board, and shall be subject to Rules adopted by the Board.

4.5.3 Except as may be approved in writing by the Board, nothing shall be done or kept that may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

4.5.4 No livestock or exotic animals of any kind may be kept on the Property. Common or household pets, including but not limited to dogs and cats, shall not constitute a nuisance to any other Owners. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.

4.5.5 Parking spaces are restricted to use as access and as a parking space for vehicles.

4.5.6 No abandoned or inoperable vehicle of any kind shall be stored or parked on any of the Common Elements. An "abandoned or inoperable vehicle" shall be defined as any vehicle that is not capable of being driven under its own propulsion, or does not have current registration, or license plates or other identifying marks have been removed from the vehicle, or the vehicle exhibits other characteristics of abandonment or inoperability, such as, but not limited to, flattened tires. The Board shall have the right to further define abandoned or inoperable vehicles, or restrict certain types of vehicles or equipment by adoption of Rules. The Board shall have the right to tow, remove or store a vehicle or equipment in violation of this Section, the expense of which shall be levied against the Owner of the vehicle or equipment as a Default Assessment.

4.5.7 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer, boat or equipment, may be performed or conducted on the Project. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, motor-driven cycle, or other vehicle.

together with those activities normally incident and necessary to such washing and polishing within the Project.

4.5.8 Except for political signs permitted by the Act, no advertising or signs of any character shall be erected, placed, maintained or permitted on any part of a Unit, other than a name plate of the occupant and an address or street number, and except a "For Sale," "Open House," "For Rent" or security signs of not more than five (5) square feet; and other such signs, for such lengths of time as have been approved in advance by the Board. The Association may issue, and amend from time to time, Rules or architectural guidelines that modify, relax or further restrict the provisions of this subsection.

4.5.9 All trash, garbage or other refuse shall be kept in containers provided by the Association for such purpose, in the area designated for such purpose. The Association shall provide for regular trash removal as a Common Expense. The Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse.

4.5.10 Each Unit at all times shall be kept in a clean, sanitary, sightly and attractive condition and in a state of good repair.

4.5.11 All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit or a Limited Common Element under the exclusive use and control of an Owner unless first approved by the Board.

4.5.12 Window coverings in Units shall be in compliance with Rules adopted by the Board.

4.5.13 Balconies, decks, patio areas, and terraces appurtenant to Units may not be used as storage areas.

4.5.14 No grills of any type are permitted other than those provided by the Association.

4.5.15 Except for outdoor patio furniture that does not impede or block access to balconies, no furniture shall be located on wood balconies.

4.5.16 Upon installation or replacement of any flooring in a Unit, an Owner shall install sound deadening materials in accordance with international building codes standards with a sound level rating of STC (Sound Transmission Class) or IIC (Impact Insulation Class) of at least 55, or other such standard as may be determined or approved by the Board.

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

Section 4.6 Damage Caused by Owner or Permitted User. If, due to the act or neglect of an Owner or Permitted User, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner or Permitted User shall be liable and responsible for the payment of same. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in this Declaration.

Section 4.7 No Partition, Subdivision or Combination. No portion of the Project shall be subject to an action for partition or division. No Units shall be subdivided, resubdivided or combined without the express written consent of the Board, which consent may be granted, withheld or conditioned in the Board's sole and absolute discretion.

ARTICLE V.

MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

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

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

Section 5.3 Membership: Voting Rights. The Association shall have one (1) class of membership consisting of all Owners. Except as otherwise provided for in this Declaration, each Member in Good Standing shall be entitled to vote in Association matters as set forth in Section 2.2.3 above, except that Units owned by the Association shall not be entitled to vote. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 5.4 Board of Directors. All members of the Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Board shall be an authorized representative of such entity Member.

Section 5.5 Books and Records. Subject to provisions of CCIQA, the Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association.

Section 5.6 Manager. The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions or duties of the Association.

Section 5.7 Address of Association. The address of the Association for purposes of receiving notices required by Colorado law, including without limitation, notices of foreclosure, shall be the address of the Association's principal place of business on file with the Colorado Secretary of State, as such address may be changed from time to time.

ARTICLE VI.

DUTIES AND POWERS OF THE ASSOCIATION AND BOARD OF DIRECTORS

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

6.1.1 Duty to Manage and Care for Common Elements. The Association shall regulate the use of, manage, operate, care for, maintain, keep in good repair, and replace the Common Elements in a manner that is similar to comparable condominium buildings in the immediate area.

6.1.2 Duty to Pay Taxes and Assessments. The Association shall pay all taxes and assessments, if any, levied upon the Common Elements and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

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

6.1.4 Duty as to Budgets. The Association shall prepare, and submit to the Owners, annual budgets for revenues, expenditures and reserves for the Association as elsewhere provided in this Declaration.

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

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

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

6.1.7 Duty to Maintain Register of Addresses and Notify of Address Change. The Association shall maintain a record of addresses which contains the address (which may include the facsimile number, if any, and, if the recipient desires to receive notices from the Association by e-mail, the e-mail address) of each Owner and each Eligible Mortgagee. The initial address for each Owner shall be the address for such Owner set forth in the deed or other instrument of record conveying the Unit to such Owner, or, if no such address is set forth, the address of the Unit of such Owner. The initial address for an Eligible Mortgagee shall be the address provided by the Eligible Mortgagee to the Association. Any Owner may change its address by giving notice to the Association of a new address in accordance with Section 20.1, and the Association shall update the Association's records in accordance with any such notice. The Association shall provide the address for each Owner to any Member who requests such information and certifies to the Association in writing that they intend to use such information for purposes authorized by this Declaration or under the Rules. The Association shall have no liability to any person (including any Owner and any Eligible Mortgagee) for providing the address as listed in the Association's records, regardless of whether such address is correct or whether any director, officer, employee or agent of the Association has knowledge, actual or imputed, that the address in the Association's records is not correct. No information with respect to any Eligible Mortgagee's or any Owner's address shall be imputed to the Association or any director, officer, employee or agent of the Association, and the Association shall be entitled to rely solely on the initial address determined in accordance with this Section 6.1.7 or the most recent address, if any, furnished to the Association by any Eligible Mortgagee, or any Owner by notice given in accordance with Section 20.1.

6.1.8 Power to Adopt Bylaws and Rules. The Association may adopt, amend, repeal and enforce Bylaws and such Rules as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Units or the Common Elements, the use of any other property within the Community, and otherwise for the benefit of the Project and the Owners. Any such Rules shall be reasonable and uniformly applied. Written notice of the adoption, amendment or repeal of any Rules shall be posted at the Association office, and copies of the currently effective Rules shall be made available to each Member upon request and payment of the copying cost. Each Member shall comply with such Rules and shall see that Permitted Users of such Member comply with the Rules. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and the provisions of this Declaration, the provisions of this Declaration shall control.

6.1.9 Power to Enforce Declaration and Rules. The Association shall have the power to enforce the provisions of the Documents, and shall take such action as the Board deems necessary or desirable to cause compliance by each Member and Permitted Users.

Without limiting the generality of the foregoing, the Association shall have the power to impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and impose other sanctions (including withholding a Member's right to vote) for violations of the Association Documents.

6.1.10 Power to Make Contracts and Incur Liabilities. The Association shall have the power to enter into, make, perform or enforce contracts, leases, licenses, agreements, easements, rights-of-way, and/or concessions through or over the Common Elements, or any portion thereof, with Owners, their family members, tenants, guests, invitees and other persons or entities, for any purpose deemed to be in the best interest of the Association, including contracts, licenses, agreements, easements, rights-of-way and/or concessions for the provision of cable, satellite or other television or wired or wireless broadcast or communication service to the Project, or any portion thereof. Any of such contracts, leases, licenses, agreements, easements, rights-of-way, and/or concessions shall be upon such terms as agreed to by the Board.

6.1.11 Power to Incur Liabilities. The Association shall have the power to incur liabilities in the name of the Association, except that the Common Elements may only be subjected to a security interest in compliance with the provisions of Section 6.1.19 below.

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

6.1.13 Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

6.1.14 Power to Commence and Maintain Legal Actions. The Association shall have the power to commence and maintain, defend or intervene in litigation, arbitration and administrative proceedings in its own name on behalf of itself or two or more Owners regarding such issues and against such parties as may be deemed appropriate by the Board and as may be permitted under the Act, subject, however, to the provisions of Article 19 herein. In determining whether to commence or maintain legal actions, the Board shall exercise its reasonable judgment, considering, without limitation, the likelihood of success, the impact, if any, which such action may have upon the market values of the Units, the cost of pursuing the action including attorneys' fees and experts' fees, the resources of the Association and whether a special assessment or depletion of reserves will be required in connection therewith or as a result thereof.

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

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

6.1.17 Power to Impose Fees and Charges. The Association shall have the power to impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements, and the Association shall have the power to impose reasonable charges for the preparation and recording of amendments to the Declaration or statements of unpaid Assessments. In addition, the Association shall have the power to impose and receive a nonrefundable move-in/move-out fee each time an Owner of a Unit or tenant moves into the Association.

6.1.18 Power to Provide Special Services for Members. The Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to the terms of this Declaration, or to an agreement in writing, that shall provide for payment to the Association by such Member or group of Members of the costs and expense that the Association incurs in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members, and that the payment for such services shall be secured by a lien on the Units of the Member or group of Members and may be collected in the same manner as an Assessment, or, if the written agreement

so provides, in installments as part of the Assessments.

6.1.19 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and assign its future income, including its right to receive Assessments upon resolution of the Board. Further, the Association shall have the power to encumber, in the name of the Association, any right, title or interest in real or personal property, except that Common Elements may be conveyed in fee or subjected to a security interest only if (a) Members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to that action, and (b) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to convey that Limited Common Element or subject it to a security interest.

6.1.20 Power to Indemnify. The Association shall have the power to provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance.

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

6.1.22 Power Relating to Parcel A and Parcel B. The Association is the owner of real property known as Parcel A and Parcel B, by virtue of a Special Warranty Deed dated February 11, 1976 and recorded February 17, 1976 in Book 492, at Page 167, Reception No. 309805, in the records of the Clerk and Recorder for the County of Gunnison, and as more particularly described in Exhibit C, attached hereto ("Parcel A and Parcel B"). Parcel A and Parcel B were not part of the original Project and are not Common Elements. Parcel A and Parcel B may be conveyed in fee only if Members to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to that action.

Section 6.2 Powers of the Board of Directors. Except for such rights as are expressly reserved to the Members herein or in the Bylaws and the Act or CCIOA, the Board shall have the power to, and may act in all instances on behalf of the Association.

Section 6.3 Limitation on Liability. Except as otherwise provided by law:

- A. The Association, the Board, and any Member, director, officer, agent, or employee of the Association shall not be liable to any person for any action or for any failure to act under the provisions of the Association Documents if the action or failure to act was in good faith and without malice.

- B. The Association, the Board, and any Member, director, officer, agent, or employee of the Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising only after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility, and only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.
- C. The Association, the Board, and any Member, director, officer, agent, or employee of the Association shall not be liable to the Owner of any Unit or such Owner's tenant, guest, agent, invitee or family for loss or damage, by theft or otherwise, of any property which may be stored in or upon the Common Elements.
- D. The Association, the Board, and any Member, director, officer, agent, or employee of the Association shall not be liable to any Owner, or any Owner's tenant, guest, agent, invitee or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this section where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

**ARTICLE VII,
MECHANIC'S LIENS**

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

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at the Owner's own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.3 Association Action. Labor performed or materials furnished for the

Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, may be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be imposed against an individual Unit or Units.

ARTICLE VIII. EASEMENTS

Section 8.1 Recorded Easements. The Property shall be subject to all easements set forth herein, those shown on any Map or plat, those of record, those provided in CCIOA, and otherwise as set forth in this Article.

Section 8.2 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, electricity, telephone, and cable television, except that any such easements not in existence as of the date of recording this Declaration may not be utilized by the utility providers until after receiving written approval from the Board. Said blanket easement includes future utility services not presently available to the Units that may reasonably be required or desirable in the future. By virtue of this easement, after receiving approval of the Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Board as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

Section 8.3 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 8.4 Emergency Access. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 8.5 Maintenance and Repair Access. Some of the Common Elements are or

may be located within a Unit, or are accessible only through a Unit. All Owners shall permit a right of entry to the Board, or any other person authorized by the Board, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement of any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after providing at least one day's notice in writing to the Owner. In case of emergency, entry may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry. The Board or its agent is granted the authority to use such reasonable force as is necessary to gain entry into the Unit for any access granted under this Section 8.5 if no other means of entry are available in view of the circumstances.

Section 8.6 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

Section 8.7 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for the maintenance of the same. Such encroachments shall not be considered to be encumbrances either on the Common Elements or a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof in accordance with the provisions of this Declaration.

ARTICLE IX. MAINTENANCE

Section 9.1 Maintenance by Owners. Each Owner shall maintain, repair and replace, as necessary: (i) the interior of his Unit, including non-supporting walls and the surface materials such as plasters, drywall, paneling, wallpaper, paint, tile, and carpeting of the perimeter walls, ceilings, and floors within the Unit, including Unit doors, windows and screens; (ii) fixtures and equipment installed within the Unit, including maintenance or repairs thereto to the extent necessary in order to avoid damaging other Owners; (iii) utility service lines serving the Unit to the point where such lines connect with utility lines serving other Units; (iv) repair or replacement of windows and doors of the Unit, including windows and doors that are part of the Common Elements enclosing a Unit (except that such repairs and replacement other than glass repairs shall only be permitted following prior approval of the Board) and; (v) the Limited Common Elements appurtenant to such Owner's Unit, except that the Association shall be responsible for maintaining, repairing or replacing parking spaces, decks, patios, porches, balconies, and terraces designated as Limited Common Elements, and Limited Common

Elements that serve more than one Unit. Notwithstanding the foregoing sentence, each Owner shall be responsible for keeping Limited Common Elements appurtenant to such Owner's Unit in a good, clean, sanitary and attractive condition. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. The Association reserves the right, from time to time, and at different times, to assign the responsibility for maintenance of the improvements (including Common Elements) to the Owners of the Units, and the Owners are obligated to accept said maintenance responsibility, provided said assignment is done in a nondiscriminatory manner. Further, the Association reserves the right to revoke any permission granted or responsibility delegated herein, from time to time, and at different times, in which event the Association shall be responsible for maintenance as further set forth herein. Subject to availability of any insurance proceeds, in the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Permitted User, the then Owners of the Units to which the Limited Common Element is appurtenant shall equally bear the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Permitted User's negligence.

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

Section 9.3 Maintenance by Association. The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth in Section 9.1 above and unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Permitted User as set forth in Section 9.4 below), which shall be the Common Expense of all Owners. All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements, at the instance of or as the result of the acts or omissions of the Association, shall be paid for as a Common Expense of the Association. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance, or order of any governmental authority.

Section 9.4 Association Maintenance as Common Expense. Subject to availability of any insurance proceeds, the cost of maintenance and repair by the Association shall be a

Common Expense. Damage to the interior or any part of a Unit resulting from the maintenance, repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of an Owner, or Permitted User, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner or Permitted User's negligence caused such damage, which must be timely paid. In the event the Owner fails to pay the cost of the damages incurred within the time permitted by the Board, the Association may pay for said damages and charge the Owner responsible as a Default Assessment.

Section 9.5 No Other Alterations to Common Elements. Except as required herein, no Owner shall make any addition or other alteration to any portion of the Common Elements (either General and Limited Common Elements), no matter how minor, without the express written consent of the Board, which consent may be withheld in the Board's sole and absolute discretion.

ARTICLE X. INSURANCE

Section 10.1 General Insurance Provisions. The Association shall acquire and pay for, out of the assessments levied under Article 11 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

10.1.1 Property Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Board to represent not less than the full then current insurable replacement cost of the buildings located on the Property, including all of the Units and Common Elements. The required insurance shall include all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows, and other elements or materials comprising a part of the Units and including any fixtures, equipment, or other property within the Units that are to be financed by a Mortgage to be purchased by an Agency. The required insurance shall exclude any betterments and improvements made by Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Board, provided, however, that if an Agency requires specific deductibles, the Board shall follow such Agency's requirements. In the event the Project has central heating or cooling or contains a steam boiler, coverage for loss or damage resulting from steam boiler and machinery equipment accidents in an amount equal to the insurable value of the buildings housing the boiler or machinery shall also be obtained. Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations, or improvements to the Unit which increase the replacement value of the Unit. In the event that a satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery

and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations, or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 hereof in the event the Association pays such premium for an Owner.

10.1.2 Commercial General Liability. Commercial general liability insurance for the Project in such amounts as the Board deems desirable, for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the Board, the Manager, if any, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the area, including automobile liability insurance if appropriate. The Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability, and automobile insurance, on all of which the Association is named as an additional insured.

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

10.1.4 Mandatory Owner's Insurance. Each Owner of a Unit shall obtain and maintain insurance coverage on the furnishings, fixtures, and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit (unless financed by a Mortgage to be purchased by an Agency), casualty and public liability insurance coverage for each Unit and the Limited Common Elements appurtenant thereto, and require workers performing work within each Unit or on the Limited Common Elements appurtenant thereto, to carry appropriate worker's compensation insurance.

Each Owner must provide their own loss assessment coverage, coverage for the Association's deductible, liability coverage, and property insurance coverage on the Units not provided by the Association. In the event an Owner fails to obtain and maintain such insurance, and an uninsured loss occurs which would have otherwise been covered under the insurance required by this paragraph, such Owner shall be liable to the Association or other Unit Owner for the loss suffered, and the Association shall be entitled to recover such amounts from the Owner in the same manner as any other debts owed to the Association. In addition, upon request from the Board, each Owner shall deliver to the Association a Certificate of Insurance providing proof that the Owner has complied with the requirements of this Subsection 10.1.4. Failure of the Association to obtain a Certificate of Insurance from each Owner will in no way result in any liability to the Association for an Owner failing to deliver a Certificate of Insurance to the Association or for failure of an Owner to obtain insurance as required by this Subsection 10.1.4.

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

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

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

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

10.4.2 Repair or replacement would be illegal under any state or local statute or

ordinance governing health or safety;

10.4.3 There is a vote not to repair or replace by (a) Owners to whom at least sixty-seven percent (67%) of vote in the Association are allocated and (b) every Owner of a Unit or assigned Limited Common Element that will not be repaired or replaced; or

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

Section 10.5 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others, including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than a sum equal to three (3) months' Annual Assessments, plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees, and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

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

Section 10.7 Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Board may deem appropriate on behalf of the Board and the Association's officers against any liability asserted against a member of the Board or incurred by the member in the member's capacity of or arising out of the member's status as a member of the Board.

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

Section 10.9 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if some of the insurance is attributable to some but not all of the Units, the

Association reserves the right to charge the Owners for which the insurance coverage is attributable, an amount equal to the premium attributable to such additional insurance coverage.

Section 10.10 Policies Regarding Claims and Deductibles. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the Property, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. Any loss less than the specified deductible of such policy shall be borne by the person or entity who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance between the Association and a Unit Owner of the damaged or destroyed property, the Association in its reasonable discretion may assess the Association and the Unit Owner a pro rata share of any deductible required by such policy. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible required by such policy. Notwithstanding the foregoing, after notice and hearing, the Board may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon such determination, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as a Default Assessment.

ARTICLE XI ASSESSMENTS

Section 11.1 Obligation. Each Owner is obligated to pay to the Association (i) the Annual Assessments; (ii) Special Assessments; (iii) Default Assessments; and (iv) Rental Assessments pursuant to Section 4.3, if applicable. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner(s) at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself or herself from liability for the Assessment by abandonment of the Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments shall be payable in accordance with the levy thereof, and no offsets or deductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under the Association Documents.

Section 11.2 Budget. The Board shall, in advance, prepare and adopt a proposed Common Expense budget annually based on estimated Common Expenses. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as required herein or deemed desirable or necessary by the Association, landscaping of

the Common Elements, care of grounds within the Common Elements, routine repairs and renovations within the Common Elements, wages, common water and sewer, electricity and natural gas utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

Section 11.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the adopted budget. Except as expressly otherwise provided herein, the Board shall levy and assess the Annual Assessments to each Owner in accordance with the Allocated Interests in effect on the date of the Annual Assessment, provided, however, that any expense associated with the maintenance, repair or replacement of a Limited Common Element (other than parking spaces and storage spaces) shall be assessed against the Units to which the Limited Common Element is assigned, equally among such Units to which such Limited Common Element is allocated, and the Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only. Utility expenses benefiting only one Unit shall be assessed to that Unit. Utility expenses benefiting more than one Unit shall be assessed to the Units benefited in accordance with their relative Allocated Interests in allocation of Common Expenses. Annual Assessments shall be payable in advance monthly or on such other basis as may be determined by the Board, and shall be due on the first day of each period in regular installments on a prorated basis. The omission or failure of the Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 11.4 Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to each Unit on the first day of the month following the effective date of adoption of the budget. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the installment due.

Section 11.5 Special Assessments. In addition to the Annual Assessments, the Board, upon approval of Owners to whom sixty-seven percent (67%) of the votes are allocated at a meeting of the Members called for such purpose (except that no Member approval is required for the levy of a Special Assessment under the provisions of Section 12.4), may levy Special Assessments payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess the Special Assessment only against the Owners of affected Units. For purposes of this Section 11.5, written notice of any meeting called for the purpose of voting on a Special Assessment shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. The quorum for such meeting shall be Members present in person or by proxy entitled to cast sixty percent (60%) of the votes in the Association. If the required quorum is not present in person or by proxy, another meeting may be

called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 11.6 Default Assessments. All fines or charges assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 11.7 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, Default, or Rental Assessment, which is not paid when due shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

11.7.1 If the delinquency continues for a period of ten (10) days, assess a late charge for each delinquency in such amount as the Association deems appropriate and assess an interest charge from the due date until paid at the yearly rate of eighteen percent (18%) per year;

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

11.7.3 Accelerate all remaining Assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;

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

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

11.7.6 Suspend any of the Owner's membership privileges.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (b) the lien or charge of any first mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a first mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any First Mortgagee of an action or a nonjudicial foreclosure either to enforce or extinguish the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such

foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien. Recording of this Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for Assessments is not required. However, the Board or any agent of the Board may prepare and record in the County a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit, and a description of the Unit. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Unit to collect all sums alleged to be due from that Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of Assessments due or to become due to the Association.

Section 11.8 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgagee.

ARTICLE XII. DAMAGE OR DESTRUCTION

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

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

insurance trustee, if any, determines to be necessary.

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

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any property insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, levy, assess, and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in a like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

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

**ARTICLE XIII.
CONDEMNATION**

If part or all 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 Section 38-33.3-107 of CCIOA.

**ARTICLE XIV.
ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article VIII, (b) purchasing and maintaining insurance pursuant to Article X, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other

acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article X upon their damage or destruction as provided in Article XII, (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article XIII, above, or (d) acting in any other capacity on behalf of the Owners when approval by the Owners is required and has been obtained. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact for the purposes provided for herein, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE XV.
ALTERATIONS, ADDITIONS OR IMPROVEMENTS
TO COMMON ELEMENTS**

Section 15.1 Alterations, Additions or Improvements to Common Elements. No alteration, addition or improvement to the Common Elements of any kind (including, without limitation, change in color or texture of exterior surfaces, modifications of doors or windows, enclosures of patios, balconies, patios or terraces), or which in any manner affect the Common Elements (by way of example and not by way of limitation, addition of air conditioning units, hot tubs, spas, fireplaces, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the Board. All alterations, additions or improvements shall comply with any Rules adopted by the Board governing architectural or design considerations, signs, window coverings, lighting or other alterations, additions or improvements. In the event the Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment to the end that any modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Board has the absolute right to deny any requested changes.

Section 15.2 Governmental Approval. If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided approval has been given by the Board, then the application shall be executed on behalf of the Association by an authorized officer, without however incurring any liability on the part of the Board, the Association or any of them to any contractor, subcontractor or materialman on account of such alteration, addition or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

Section 15.3 Architectural Review Committee. The Board shall have the right, without the obligation, to establish an Architectural Review Committee (the "Committee") which shall be responsible for such matters as may be assigned by the Board, which may include, by way of example, and not by way of limitation, the following: establishment and administration of architectural or design guidelines, sign guidelines and criteria, window covering guidelines and

lighting guidelines; review and recommendations for approval, disapproval or approval with conditions of alterations or additions to Common Elements (whether General or Limited); and such other matters as the Board may request.

Section 15.4 Association Right to Remove Unauthorized Alterations, Additions or Improvements. The Association, after reasonable notice to the Owner of the offending Unit, may remove any alterations, additions or improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal.

ARTICLE XVI MORTGAGEE'S RIGHTS

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

Section 16.1 Title Taken by First Mortgagee. Any First Mortgagee of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier.

Section 16.2 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any First Mortgagee against the Unit.

Section 16.3 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 16.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, and upon payment in advance by such Agency or Mortgagee of the estimated cost as determined by the Board, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.

Section 16.5 Notice of Action. Any Eligible 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:

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

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

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

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

Section 16.6 Action by Mortgagee. If this Declaration or any Association Documents require Eligible Mortgagees to approve or consent to action of the Association, the Association shall send a dated, written notice and a copy of any proposed action by certified mail to each Eligible Mortgagee at its address provided to the Association. An Eligible Mortgagee that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed action. No approval or consent is required of Mortgagees who are not also Eligible Mortgagees.

Section 16.7 Junior Mortgages. The owner of a Unit may create junior Mortgages on the following conditions: (i) that any such junior Mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for Common Expenses, and other obligations created by this Declaration and the Bylaws; (ii) that the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of its right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of one or more of the members of the Board. If not given, such release may be executed by the Association, as attorney-in-fact for such junior Mortgagee.

ARTICLE XVII. DURATION OF COVENANTS AND AMENDMENT

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of CCIOA.

Section 17.2 Amendment. Owners may amend the covenants and restrictions of this Declaration at any time, as follows:

- A. By written approval of Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated.
- B. Any amendment shall be effective upon being properly recorded in the records of the Clerk and Recorder of Gunnison County, Colorado.
- C. Upon instruction from the Board, the President and Secretary of the Association may certify to their receipt and review of the necessary number of written approvals and that the appropriate number of Owners approved the amendment, in lieu of recording individual signatures.
- D. Where a Unit is owned by more than one (1) person, the approval of any amendment or revocation shall be valid if approved by any one (1) Owner. Where a Unit is owned by an entity, the entity may approve the amendment through action of a duly authorized representative. Signatures need not be notarized. The signature need not be identical to the name of the recorded Owner, but shall be sufficiently close as to be identified as a proper signature of such person. The records verifying approval by the Owners, including originals of all signatures, shall be retained for a period of three (3) years after the date of recording the amendment.
- E. No action shall be commenced or maintained to challenge the validity of any aspect of any amendment of the Association's Declaration, Articles of Incorporation or Bylaws unless it is commenced within one (1) year after the effective date of the amendment.

**ARTICLE XVIII.
LIMIT ON TIMESHARING**

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

**ARTICLE XIX.
GENERAL PROVISIONS**

Section 19.1 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given and effective if in writing and, if

delivered personally by courier or private service delivery on the date of delivery, or if delivered by mail, on the third business day after deposit in the U.S. mail at the address provided to the Association by the Owner, and if none, to the address of record for real property tax assessment notices with respect to that Owner's Unit.

Section 19.2 Enforcement. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this Section, the Association or any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents. The prevailing party in any such action shall be entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorneys' fees in connection with such action. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 19.3 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 19.4 Conflicts Between Documents. The Association Documents are intended to comply with the applicable requirements of CCIOA and the Nonprofit Act. If there is any conflict between the Association Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Association Document, this Declaration shall control.

Section 19.5 No Representations, Guaranties or Warranties. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by the Association, the Board, the Architectural Review Committee, if any, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Project, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing.

Section 19.6 Disclaimer Regarding Safety. THE ASSOCIATION, THE BOARD AND THE ARCHITECTURAL REVIEW COMMITTEE, IF ANY, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SAFETY, SECURITY OR PROTECTION OF ANY PERSONS OR PROPERTY WITHIN THE PROJECT. BY ACCEPTING A DEED TO PROPERTY WITHIN THE PROJECT, EACH OWNER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD AND THE ARCHITECTURAL REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES ARE ONLY OBLIGATED TO DO

THOSE ACTS SPECIFICALLY SET FORTH IN THE DOCUMENTS, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY, SECURITY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE PROJECT.

IN WITNESS WHEREOF, the undersigned, being the President and Secretary of the Association, hereby certify that the Association has obtained the written consent of Owners representing an aggregate ownership interest of at least sixty-seven percent (67%) of the general common elements, and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units, and that the originals of such written consents are kept in the corporate records of the Association and are available for inspection.

The Association has caused this Declaration to be executed this 26th day of October, 2020

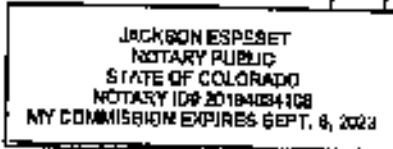
San Moritz Condominium Association

By: [Signature]
John Daniel Denbow President

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The foregoing instrument was acknowledged before me this 10/26, 2020, by John Daniel Denbow as President of San Moritz Condominium Association. Witness my hand and official seal.

My commission expires: 09/06/2020



[Signature]
Notary Public

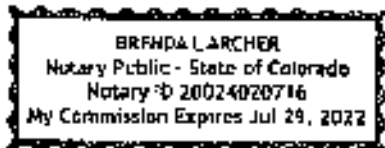
San Moritz Condominium Association

By: [Signature]
Secretary

STATE OF COLORADO)
) ss.
COUNTY OF Gunnison)

The foregoing instrument was acknowledged before me this October 27, 2020, by Mary E Pick as Secretary of San Moritz Condominium Association.

Witness my hand and official seal.
My commission expires: 7/29/2022



[Signature]
Notary Public

EXHIBIT A
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
SAN MORITZ CONDOMINIUMS

PROPERTY SUBJECT TO DECLARATION

LEGAL DESCRIPTION:

The following described real property situated in Gunnison County, Colorado:

A tract of land located in the Northeast Quarter (NE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section 26, Township 13 South, Range 86 West, 6th Principal Meridian described as follows:

Commencing at a point from whence the East $\frac{1}{4}$ Corner (Brass cap) of said Section 26 bears North $50^{\circ}05.5'$ East 824.4 feet; thence South $35^{\circ}14.4'$ West 20.0 feet to the point of beginning of the tract herein described; thence South $35^{\circ}14.4'$ West 411.7 feet; thence North $65^{\circ}19.3'$ West 211.0 feet more or less to a point which is South $37^{\circ}25'$ West from the southeasterly corner of a tract of land described in Book 379 at Page 333 of the Records of Gunnison County, Colorado. (The tract of land described in Book 379 at Page 333 being located with respect to the on-the-ground location of the easterly line of Hunter Hill Road and by disregarding the record tie as called for in said Book 379 at Page 333); thence North $37^{\circ}25'$ East 207.0 feet to said southeasterly corner; thence continuing North $37^{\circ}25'$ East along the easterly boundary of said tract described in Book 379 at Page 333 a distance of 81.0 feet; thence along a curve to the right whose radius is 100 feet and whose long chord bears North $73^{\circ}00'$ East 116.38 feet, an arc distance of 124.21 feet to the northeasterly corner of said tract described in Book 379 at Page 333; thence South $84^{\circ}10.1'$ East 143.75 feet more or less to the point of beginning containing 1.717 acres more or less.

(Directions are based on a Government Record Direction of North $2^{\circ}34'$ West between brass caps located at the East Quarter Corner and the Northeast Corner of Section 26, Township 13 South, Range 86 West, 6th Principal Meridian.)

A tract of land located in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), Section Twenty-six (26), Township Thirteen (13) South, Range Eighty-six (86) West of the 6th Principal Meridian, Gunnison County, Colorado, described as follows:

Commencing at a point from whence the East quarter corner (brass capped) of said Section 26 bears North 72°05.9' East 915.6 feet, said commencing point being marked by a 1/2 inch reinforcing bar with a blue plastic cap marked, "L.S. 9476"; thence from said commencing point South 18°07' West 78.4 feet to the point of beginning; thence continuing around the tract South 18°07' West 198.4 feet, more or less to the Northerly boundary of a tract described in Book 379, at page 333 of the records of Gunnison County, Colorado; thence North 71°25' West along said Northerly boundary 250.0 feet more or less to the Easterly boundary of Hunter Hill Road according to the Replat of Chalet Village Addition No. 3; thence North 1°55' East along said boundary 102.0 feet more or less to Boundary Point 17 of said Replat of the Chalet Village Addition No. 3; thence continuing along said road boundary along the arc of a curve to the left having a radius of 128.0 feet a distance of 145.6 feet more or less to a point which is North 56°42' West of the commencing point; thence South 56°42' East 388.0 feet more or less, to a point which is North 56°42' West, 65.0 feet from the commencing point; thence South 33°18' West 73.0 feet; thence South 56°42' East 84.8 feet to the point of beginning, containing 2.0 acres, more or less.

EXHIBIT B
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
SAN MORITZ CONDOMINIUMS
(Allocated Interests)

<u>UNIT NO.</u>	<u>BUILDING</u>	<u>ALLOCATED INTEREST</u>
101	Keystone	One-forty-eighth (1/48)
102	Keystone	One-forty-eighth (1/48)
103	Keystone	One-forty-eighth (1/48)
104	Keystone	One-forty-eighth (1/48)
201	Keystone	One-forty-eighth (1/48)
202	Keystone	One-forty-eighth (1/48)
203	Keystone	One-forty-eighth (1/48)
204	Keystone	One-forty-eighth (1/48)
301	Keystone	One-forty-eighth (1/48)
302	Keystone	One-forty-eighth (1/48)
303	Keystone	One-forty-eighth (1/48)
304	Keystone	One-forty-eighth (1/48)
101	Jokerville	One-forty-eighth (1/48)
102	Jokerville	One-forty-eighth (1/48)
103	Jokerville	One-forty-eighth (1/48)
104	Jokerville	One-forty-eighth (1/48)
201	Jokerville	One-forty-eighth (1/48)
202	Jokerville	One-forty-eighth (1/48)
203	Jokerville	One-forty-eighth (1/48)

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204	Jokerville	One-forty-eighth (1/48)
301	Jokerville	One-forty-eighth (1/48)
302	Jokerville	One-forty-eighth (1/48)
303	Jokerville	One-forty-eighth (1/48)
304	Jokerville	One-forty-eighth (1/48)
101	Paradise	One-forty-eighth (1/48)
102	Paradise	One-forty-eighth (1/48)
103	Paradise	One-forty-eighth (1/48)
104	Paradise	One-forty-eighth (1/48)
201	Paradise	One-forty-eighth (1/48)
202	Paradise	One-forty-eighth (1/48)
203	Paradise	One-forty-eighth (1/48)
204	Paradise	One-forty-eighth (1/48)
301	Paradise	One-forty-eighth (1/48)
302	Paradise	One-forty-eighth (1/48)
303	Paradise	One-forty-eighth (1/48)
304	Paradise	One-forty-eighth (1/48)
101	International	One-forty-eighth (1/48)
102	International	One-forty-eighth (1/48)
103	International	One-forty-eighth (1/48)
104	International	One-forty-eighth (1/48)
201	International	One-forty-eighth (1/48)

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202	International	One-forty-eighth (1/48)
203	International	One-forty-eighth (1/48)
204	International	One-forty-eighth (1/48)
301	International	One-forty-eighth (1/48)
302	International	One-forty-eighth (1/48)
303	International	One-forty-eighth (1/48)
304	International	One-forty-eighth (1/48)

EXHIBIT C
TO
AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
SAN MORITZ CONDOMINIUMS

SEPARATELY OWNED PROPERTY OF THE ASSOCIATION

LEGAL DESCRIPTION:

PARCEL A:

A tract of land located in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, Township 13S, Range 86W, 6th P.M. described as follows:

Beginning at a point from whence the E $\frac{1}{2}$ corner (Brass Capped) of said Section 26 bears N72°05.9' E 915.6 feet, said beginning point marked by a $\frac{1}{2}$ inch rebar with cap "T.S. 9476"; thence from said beginning point S18°07'W 78.4 feet to the NE corner of the San Moritz Condominium tract according to the map filed under Reception No. 288022 on March 6, 1972; thence N56°42'W along a northerly boundary of said Condominium tract 84.8 feet; thence N33°18'E along a northeasterly boundary of said Condominium tract 73.0 feet; thence leaving said Condominium tract S59°04.4'E 64.32 feet to the point of beginning.

PARCEL B:

A tract of land located in the Northeast $\frac{1}{4}$ (NE $\frac{1}{4}$) of the Southeast $\frac{1}{4}$ (SE $\frac{1}{4}$) of Section 26, Township 13 South, Range 86 West, Sixth Principal Meridian described as follows:

Commencing at a point from whence the east $\frac{1}{2}$ corner (Brass Cap) of said Section 26 bears North 30°05.5' East 824.6 feet; thence South 35°14.4' West 80.0 feet; thence North 84°10.1' West 68.88 feet to the point of beginning of the tract herein described;

Thence proceeding around the tract North 84°10.1' West 74.87 feet more or less to the Northeasterly corner of a tract of land described in Book 371 at page 333 of the records of Gunnison County, Colorado. (The tract of land described in Book 379 at page 333 being located with respect to the on-the-ground location of the easterly line on Hunter Hill Road and by disregard the record tie as called for in said Book 379 at page 333);

Thence North 71°25' West along the northerly boundary of said tract described in Book 379 at page 333 a distance of 140.9 feet more or less to the Southeasterly corner of a tract of land described on the Condominium Map of San Moritz Condominiums as filed for record in Gunnison County for November 2, 1970, under Reception No. 288022;

Thence North 18°07' East along the easterly boundary of said San Moritz Condominiums 188.4 feet more or less to the Northeasterly corner of said San Moritz Condominiums;

Thence South 56°42' East 254.97 feet;

Thence South 35° 14,4' West 111.79 feet to the point beginning.

Descriptions are based on Government record direction of North 2°36' West between Brass Caps located at the East $\frac{1}{2}$ corner and the Northeast corner of Section 26, Township 13 South, Range 86 West, Sixth Principal Meridian.