

AMENDED AND RESTATED CONDOMINIUM  
DECLARATION  
FOR  
TIMBER RIDGE CORPORATION, A CONDOMINIUM  
ASSOCIATION

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AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
TIMBER RIDGE CORPORATION, A CONDOMINIUM ASSOCIATION

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR  
TIMBER RIDGE CORPORATION, A CONDOMINIUM ASSOCIATION (the "Declaration")  
is made as of \_\_\_\_\_, 20\_\_.

RECITALS

A. The real property located in the County of Pitkin, State of Colorado, that is more particularly described on Exhibit A which is attached hereto and incorporated by this reference, is subject to that certain Condominium Declaration for Timber Ridge (A Condominium), dated September 17, 1965, and recorded in the Pitkin County Records on September 20, 1965, at Reception No. 121884 ("Original Declaration").

B. Section 18 of the Original Declaration provides that the Owners may amend and restate the Original Declaration in its entirety any time by the consent of Owners representing an aggregate ownership interest in at least seventy-five percent (75%) of the General Common Elements.

C. Pursuant to § 38-33.3-217, C.R.S., 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%).

D. Owners representing at least sixty-seven percent (67%) of the aggregate interest in the General Common Elements desire and consent to amend and restate the Original Declaration in its entirety, subject to the terms and conditions of this Declaration.

E. In addition to the required Owner consent, Section 18 of the Original Declaration also provides that all of the holders of any recorded mortgage or deed of trust covering or affecting any of the condominium Units must consent to amend and restate the Original Declaration.

F. Pursuant to the procedures set forth in § 38-33.3-217, C.R.S., all holders of any recorded mortgage or deed of trust covering or affecting the condominium Units have consented to amend and restate the Original Declaration in its entirety, subject to the terms and conditions of this Declaration.

ARTICLE 1

DECLARATION AND SUBMISSION

Section 1.1 Declaration. The real property described in and subject to the Declaration (hereafter the “Property”) shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and the heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. This Declaration shall supersede in its entirety the Original Declaration, and all amendments and supplements to the Original Declaration.

ARTICLE 2  
DEFINITIONS

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

Section 2.1 “Act” means the Colorado Common Interest Ownership Act, as it may be amended from time to time and as it applies to the Project.

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

Section 2.3 “Allocated Interests” means the following interests allocated to each Unit: (a) undivided ownership interest in the Common Elements, (b) subject to any special allocations provided for in Article 11, an Owner’s share of Common Expenses, and (c) the votes in the Association.

2.3.1 Share of Common Expenses and Share of Common Elements: The percentage share of the Common Expenses and percentage share of the undivided ownership interest in the Common Elements allocated to each Unit are set forth in Exhibit B to this Declaration.

2.3.2 Allocation of Votes: The Owners of each Unit shall be entitled to a 1/21<sup>st</sup> vote in the affairs of the Association. No Owner shall be entitled to vote in any matter who is not in Good Standing with the Association.

Section 2.4 “Articles” mean the Articles of Incorporation for the Association filed with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

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

Section 2.6 “Assessments” means the Annual, Special and Default Assessments levied pursuant to Article 11 below.

Section 2.7 “Association” means Timber Ridge Corporation, A Condominium Association, a Colorado nonprofit corporation, and its successors and assigns.

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

Section 2.9 “Board” means the governing body of the Association, which is also referred to in this Declaration as the “Executive Board” or “Board of Directors.”

Section 2.10 “Bylaws” means the bylaws adopted by the Association, as amended from time to time.

Section 2.11 “Common Elements” means all portions of the Project, except the Units. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interests and consist of General Common Elements and Limited Common Elements.

2.11.1 “General Common Elements” means 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 includes all parts of the structures or any facilities, improvements and fixtures which may be within a Unit which are or may be necessary or convenient to the support, existence, use, occupation, operation, maintenance, repair or safety of the structures or any part thereof or any other Unit. The General Common Elements shall include, without limitation, the following:

- a. all of the land, and landscaping, grass, shrubbery, trees, plants, gardens, sidewalks, walkways, paths, driveways, parking areas and related improvements and facilities;
- b. all foundations, columns, girders, beams and supports of the structures making up the Units, chimneys, chimney chases, roofs, floors, ceilings, stairs, stairways, entrances and exits;
- c. the exterior walls of the structures making up the Units; the main or bearing walls within the structures making up the Units; and all portions of the walls, floors or ceilings in a structure that are not part of the Unit as described in Section 2.29 below;
- d. except as otherwise specifically provided in this Declaration, 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

e. in general, all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety, including but not limited to crawl spaces located under the building.

2.11.2 “Limited Common Elements” means 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 Owners of one Unit. Without limiting the foregoing, any portion of a chute, flue, duct, pipe, drain, wire, conduit, common walls located between decks, 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 which exclusively 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 part of the General Common Elements. Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks and all exterior doors, windows, skylights 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 the deck adjacent to a Unit and the fireplace chimneys in each Unit. The horizontal boundaries of decks 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 2.12 “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (i) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association; (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 10; and (iv) all expenses reasonably determined to be Common Expenses by the Board.

Section 2.13 “County” means the County of Pitkin, Colorado.

Section 2.14 “Declaration” means this Declaration and the Map, and amendments and supplements thereto.

Section 2.15 “Director” means a member of the Board.

Section 2.16 “Eligible Mortgagee” means 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 17 and 18.



Section 2.17 “First Mortgage” means a Mortgage, the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.18 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.19 “Good Standing” means that an Owner is no more than thirty (30) days late in the payment of any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

Section 2.20 “Manager” means 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 2.21 “Map” means the Condominium map of the Project recorded with the Clerk and Recorder of Pitkin County, 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 2.22 “Member” means any person or entity that holds membership in the Association. The Owners of each Unit shall hold membership in the Association.

Section 2.23 “Mortgage” means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.24 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage or any successor to the interest of any such person under such Mortgage.

Section 2.25 “Owner” means 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 2.26 “Permitted User” means members of the Owner’s family, or the Owner’s tenant, employee, invitee, or licensee or the employee, invitee or licensees of the tenant.

Section 2.27 “Project” means the condominium common interest community subject to this Declaration consisting of the property, the Units and the Common Elements.

Section 2.28 “Rules” means rules, regulations, procedures, policies and guidelines adopted by the Board.

Section 2.29 “Unit” means 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 sound insulation board, drywall, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, windows and window frames, doors and door frames, fireplace hearth, fireplace flue, fireplace facing brick, or tile or firebox, and any other materials constituting any part of the interior finished surfaces thereof are a part of the Units. 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:

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

2.29.2 “Unfinished Ceiling” means the beams, joists and wooden or other structural materials which constitute the ceiling of a Unit, but not including any lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, or other materials.

2.29.3 “Unfinished Floor” means the beams, floor joists, and floor deck material which constitute the floor of a Unit, but not including any concrete, finished flooring or other materials.

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

### ARTICLE 3 NAME, DIVISION INTO UNITS

Section 3.1 Name The name of the Project is Timber Ridge Condominiums. The Project is a Condominium.

Section 3.2 Association The name of the Association is Timber Ridge Corporation, A Condominium Association. It is a Colorado nonprofit corporation, organized under the laws of the State of Colorado.

Section 3.3 Number of Units. There are 21 Units in the Project.

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, Timber Ridge Corporation, A Condominium Association, County of Pitkin, State of Colorado, according to the associated Condominium Map and the Amended and Restated Condominium Declaration for Timber Ridge Corporation, A Condominium Association, as they may be amended from time to time.

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 4 RESTRICTIONS ON USE OF UNITS

Section 4.1 Use and Occupancy Regulation, General. 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 is (i) 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 within the Project; and (iv) does not increase the insurance obligation or premium of the Association. Uses described as “day care” or “child care” facilities (whether licensed or unlicensed) are expressly prohibited in the Units. This Section 4.2 shall not be interpreted to prohibit the short-term rentals of Units.

Section 4.3 Rental Restrictions. Subject to the remaining provisions of this Section 4.3, an Owner shall have the right to lease his or her Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) no lease shall be for less than the entire Unit; (ii) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents; (iii) the Owner shall provide a copy of the

Association Documents, including the Rules, to the lessee with the lease; (iv) a Unit may be leased only for the uses provided for in this Declaration; and (v) 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.

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. The Rules may conform to laws and ordinances of the State of Colorado and the City of Aspen, but may also be more restrictive than such laws and ordinances. 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. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

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 or within the Project. 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.

4.5.2 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 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 which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

4.5.4 The right to keep animals as household pets may be restricted by Rules adopted by the Board. No household pet or animal shall be allowed in or about the Project, including Common Elements, except in compliance with the terms of this Declaration and in compliance with such additional Rules adopted by the Board, which may supplement, but not supersede or be less restrictive than, the provisions of this Section 4.5.4. The Association may enforce applicable governmental regulations pertaining to animals as though such regulations constitute Rules of the Association.

4.5.5 Use of parking spaces shall be regulated through the Rules of the Association.

4.5.6 No signs, billboards, posterboards, or advertising of any nature shall be placed or permitted within the Project except as permitted by the Board, and except political signs permitted under the Act and "Open House" signs as may be permitted under the provisions of Rules adopted by the Board.

4.5.7 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. Each Unit at all times shall be kept in a clean, sightly and wholesome condition. The Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse.

4.5.8 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.

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

4.5.10 Decks may not be used as storage areas, except in compliance with Rules adopted by the Board.

4.5.11 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.

4.5.12 Notwithstanding the restrictions in this Declaration, the Association shall have the authority to grant reasonable modifications and accommodations in compliance with applicable fair housing laws.

Section 4.6 Damage Caused by Owner or Permitted User. If, due to the act or neglect of an Owner or Permitted Users, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner or Permitted User shall be liable and

responsible for payment of the costs and expenses of repairing the same. The amount of such loss or damages and any costs and expenses 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 or Subdivision of Units and Requirements for Combining Units. No portion of the Project shall be subject to an action for partition or division and no Units shall be subdivided or re-subdivided. In the event an Owner wishes to combine two (2) Units, such action shall require an amendment of the Map to designate the boundaries and square footage of the combined Unit and an amendment of the Declaration to accordingly adjust the Allocated Interests as set forth in Exhibit B to this Declaration. The Owner seeking to combine two (2) Units shall be responsible for all costs related to amending the Map and Declaration, regardless of whether such amendments are successful, and the Association makes no guarantee that the requisite number of Owners or Eligible Mortgagees will consent to such amendments as required by Section 18.2 of this Declaration.

Section 4.8 Abide by Use Restrictions. Each Owner and their Permitted Users shall abide by, and each Unit is subject to, the provisions of the use restrictions and all other covenants set forth in this Declaration, as they may be amended from time to time.

## ARTICLE 5

### 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 his or her membership in the Association in any way, except upon the sale or encumbrance of his or her Unit and then only to the purchaser or Mortgagee of his or her Unit.

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 shall be entitled to vote in Association matters as set forth in Section 2.3 above. No Owner is entitled to vote in Association affairs, nor serve on the Board, who is not in Good Standing. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 5.4 Board. All Directors shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such Director shall be an authorized representative of such entity Member. The Board shall consist of at least three and no more than five Directors, the exact number to be determined as provided in the Bylaws.

Section 5.5 Books and Records. Subject to provisions of the Act, 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 records of the Association as provided under the Act.

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.

ARTICLE 6  
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 and by the Colorado Revised Nonprofit Corporation Act, whether expressed in this Declaration 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, and to maintain, improve and enhance the health, safety, value, attractiveness and desirability of the Project. 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, repair and replace all Common Elements and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

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

6.1.3 Duty as to Budgets. The Association shall prepare annual budgets for revenues, expenditures and reserves for the Association as elsewhere provided in this Declaration and as required by the Act.

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

6.1.5 Duty to Keep Records. The Association shall keep current copies of this Declaration, the Articles of Incorporation, the Bylaws, the Rules, and other records as required by the Act available during normal business hours for inspection, and for copying at a reasonable cost, by Owners and First Mortgagees.

6.1.6 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 Association, and otherwise for the benefit of the Project and the Owners. Any such Rules shall be reasonable and fairly applied. Written notice of the adoption, amendment or repeal of any Rules shall be posted in an appropriate manner as determined by the Board from time to time, 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 the Rules and shall see that such Member's Permitted Users 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.

6.1.7 Power to Enforce Declaration and Rules. The Association shall have the power to enforce the provisions of the Association 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 attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents.

6.1.8 Power to Make Contracts and Incur Liabilities. The Association shall have the power to make contracts and incur liabilities.

6.1.9 Power to Grant Easements, Leases, Licenses and Concessions. The Association shall have the power to grant easements, leases, licenses and concessions through or over the Common Elements.

6.1.10 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 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.



6.1.11 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, or other professional or specialized 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.

6.1.12 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. 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 expert 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.

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

6.1.14 Power to Assign Parking Spaces. The Association shall have the power to assign parking spaces on General Common Elements, in a fair and equitable manner.

6.1.15 Power to Convey Common Elements. The Association shall have the power to convey the Common Elements in fee only if (a) Members to whom at least sixty-seven percent (67%) of the votes are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to convey that Limited Common Element.

6.1.16 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 recordation of amendments to the Declaration or statements of unpaid Assessments.

6.1.17 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 an agreement in writing, which shall provide for payment to the Association by such Member or group of Members of the costs and expense which 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.

6.1.18 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 are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to convey that Limited Common Element or subject it to a security interest.

6.1.19 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.

6.1.20 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado nonprofit corporation formed under the Act and the Colorado Revised Nonprofit Corporation Act, and to do and perform any and all acts which 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 of the Association, the Act or the Colorado Revised Nonprofit Corporation Act.

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

## ARTICLE 7 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 mechanics 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 any other Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save 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, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

## ARTICLE 8 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 the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), 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 which 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 Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Property and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

Section 8.3 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 all 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 restrictions 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 repairs necessary to prevent damage to the Common Elements or to another Unit. For routine maintenance, non-emergency repairs and safety inspections by the Association of smoke detectors, carbon monoxide detectors, dryer vents and individual heating units, 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. Each Owner shall be required to provide the Association with a key to their Unit for purposes of exercising the rights and obligations of the Association under this maintenance and repair access easement. In the event an Owner fails to provide a key to the Association for access to their Unit, the Board or its agent is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. In the event emergency access is not necessary and the Association has given proper notice of entry into the Unit pursuant to this Section 8.5 and an Owner has not provided the Association with a key for such entry, the Association has the authority to utilize a locksmith to gain entry to the Unit and the Owner of the Unit shall be responsible for paying any related costs incurred by the Association as a Default Assessment. So long as the Owner has provided access as set forth above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements because of such forcible entry. In the event an Owner does not provide a key for access to their Unit, the Owner shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common elements because of such forcible entry.

All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any 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. Restoration of the damaged

improvements shall be substantially to the same as the condition in which they existed prior to the damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. Upon being provided with notice, in the event the Owner fails within a reasonable time to pay the cost of the damages incurred, the Board may pay for said damages and charge back such costs to the Owner responsible as a Default Assessment.

## ARTICLE 9 MAINTENANCE

Section 9.1 Maintenance by Owners. Each Owner shall maintain, repair and replace, as necessary: (a) the interior of his or her Unit, including interior walls, non-supporting walls and the surface materials such as plasters, drywall, paneling, wallpaper, paint, tile, concrete, and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors (except the Association shall be responsible to paint exterior doors), windows, screens and skylights; (b) fixtures and equipment installed within the Unit, including maintenance or repairs thereto to the extent necessary in order to avoid damaging other Owners; (c) utility service lines serving the Unit to the point where such lines connect with utility lines serving other Units; (d) the Limited Common Elements appurtenant to such Owner's Unit, except that the Association shall be responsible for maintaining, repairing or replacing any balconies designated as Limited Common Elements and Limited Common Elements that serve more than one Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of, or otherwise modify, the Common Elements or impair any easement. Subject to availability of any insurance proceeds, in the event of damage or destruction of a Limited Common Element from 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.

Section 9.2 Owner's Failure to Maintain or Repair. In the event: (1) 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 or Limited Common Element lies with the Owner of the Unit; or (2) 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 required repair or reconstruction of those portions of the damaged or destroyed Common Element or Unit, 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 and Section 9.4), which shall be the Common Expense of all Owners.

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.

Section 9.5 No Other Alterations to Common Elements. Except as required in this Declaration, 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 10 INSURANCE

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

10.1.1 Property Insurance Coverage. Broad form property insurance, including coverage for fire, vandalism, malicious mischief, all-risk, replacement cost, and building law and ordinance coverage, in amounts determined by the Board to represent not less than the full then current insurable replacement cost of the buildings located in the Project and the Common Elements, but excluding building excavations and foundations if such insurance is not readily available for an affordable premium, as determined by the Board. The Association's property insurance shall also provide coverage for the Units, except for the following components and items which shall be covered by insurance carried by the Owners of each Unit: (1) the finished interior surfaces of the walls, floors and ceilings of the Units; (2) the cabinets, counter tops, lighting fixtures, appliances (regardless of whether such appliances are free standing or built in), other fixtures and other components, elements or materials serving only that Unit; and (3) any betterments and improvements, additions, or alterations to the Units made by any Owner, or on their behalf, at any time following original construction of the Unit. The property insurance coverage the Association will carry on the Units is commonly referred to as "bare walls coverage." Maximum deductible amounts for the property insurance coverage the Association is required to carry pursuant to this Section 10.1.1 shall be determined by the Board, provided, however, that if an Agency requires specific deductibles, the Board may follow the Agency's requirements. Each Owner shall be responsible for obtaining

additional or supplemental insurance coverage as specified in Section 10.1.4 of this Declaration.

10.1.2 Commercial General Liability. Commercial general liability insurance for the Project in such amounts as the Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the 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 which 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 Aspen and Pitkin County 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 Property 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 based upon the percentage share of Common Expenses for the Unit, as set forth in Exhibit B, 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. The Owners of each Unit, at their own expense, shall obtain and maintain property insurance on their Unit, including all finished interior walls, floors and ceilings of the Owner's Unit, cabinets, counter tops, lighting fixtures, floor coverings, bathroom fixtures, appliances (regardless of whether such appliances are free standing or built in), other fixtures, and other components, elements or materials serving only their Unit, and any betterments and improvements, additions, or alterations to his or her Unit. The Owners of each Unit shall also be responsible for obtaining insurance on all personal property, as well as personal liability coverage. Should an Owner fail to maintain the property insurance required herein, such Owner (or the principals of any Owner who is not an individual) shall be personally liable for the

amount of all losses that would have been covered had the required insurance been maintained. Within thirty days of obtaining or renewing their insurance as required by this Section, each Owner of a Unit shall deliver to the Association a certificate of insurance providing proof that the Owner is carrying the insurance required by this Section 10.1.4. The Association shall have no obligation to obtain a certificate of insurance from each owner or confirm that the coverage obtained by an Owner is sufficient to comply with the requirements of this Section and the Association shall not be liable for an Owner's failure to comply with the duties imposed by this Section 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 mortgage clause in favor of each First Mortgage of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 10 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy 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 which 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; or

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

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



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 the greater of (a) fifty thousand dollars (\$50,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate 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. In the event the Association retains the services of employees, the Board shall obtain workers' compensation in the amounts and forms as may now or hereafter be required by law.

Section 10.7 Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the 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 him in his capacity of or arising out of his 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 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 Deductibles; Claims Adjustment. The Board may adopt written nondiscriminatory policies and procedures for claims adjustment and responsibility for deductibles. To the extent the Association settles claims for damages to real property, it shall have the authority to assess any Owner causing such loss or benefitting from such repair or

restoration the deductible paid by the Association. If more than one Unit is damaged by a loss for which the Association or the Association's insurance is responsible, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

Section 10.10 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 10.11 Insurance Required Under Agency Guidelines. If any Agency guidelines conflict with the insurance requirements contained in this Article, the Board shall have the authority to modify insurance coverage in conformance with the Agency guidelines and such modified coverage requirements shall take effect after notice to all Owners; provided, however, that nothing in this Section shall serve as a mandate that the Board modify the insurance coverage to comply with Agency guidelines.

## ARTICLE 11 ASSESSMENTS

Section 11.1 Obligation. Each Owner is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner(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 his or her 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. Within ninety (90) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as provided for in the Bylaws. The budget proposed by the Board does

not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by Owners to which at least fifty-one percent (51%) of the votes in the Association are allocated, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners must be continued until a subsequent budget proposed by the Board is not vetoed by the Owners.

Section 11.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the budget adopted by the Board as set forth in Section 11.2. The Board shall levy and assess the Annual Assessments to each Owner in accordance with the Allocated Interests. Annual Assessments shall be payable in advance quarterly 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 quarter following the effective date of adoption of the budget by the Board, and which has not been vetoed by the Owners as set forth in Section 11.2, or upon commencement of the fiscal year for which the budget has been adopted.

Section 11.5 Special Assessments. In addition to the Annual Assessments, the Board may levy a Special Assessment, without the necessity of a special vote or approval of the Owners, 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, for an operating shortfall, or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess the Special Assessment only against the Owners of affected Units. Notice in writing, which may include electronic notification if an Owner has requested or consented in writing to notification by electronic mail, of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice has been given.

Section 11.6 Default Assessments. All fines 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 or Default Assessment, which is not paid when due shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) If the delinquency continues for a period of thirty (30) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) If the delinquency continues for a period of thirty (30) days, assess an interest charge from the due date until paid at the yearly rate of twelve percent (12%) per year;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;
- (vi) Proceed with foreclosure as set forth in more detail below; and
- (vii) 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, as may be amended from time to time. Such lien will be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (ii) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any First Mortgagee of an action or a nonjudicial foreclosure either to enforce or extinguish the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The

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

Section 11.8 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.

Section 11.9 Statement of Status of Assessment Payment. Upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the date of the request.

Section 11.10 Maintenance Accounts: Accounting. If the Association delegates powers of the Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per quarter an accounting for the previous quarter. In addition, the Association may obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion) and annual tax returns prepared by a certified public accountant.

## ARTICLE 12 RIGHT OF FIRST REFUSAL BY OWNERS

Section 12.1 Right of First Refusal. In the event any Owner of a Unit wishes to sell his or her Unit, and has received a bona fide offer for the sale of the Unit from a prospective purchaser, the Owner shall mail a written notice of the bona fide offer for sale of the Unit together with a copy of such offer to each Unit Owner in the Association. A Unit Owner shall have the right to purchase the subject Unit upon the same terms and condition as set forth in the offer; provided that during the twenty (20) day period immediately following the mailing of the notice, written notice of such election to purchase is delivered to the selling Owner and a matching down payment or deposit is paid to an escrow agent acting on behalf of the selling Owner. If more than one Unit Owner exercises his or her right to purchase the Unit subject to this Section 12.1, the first Unit Owner who provides the selling Owner with his or her written notice of such election to purchase and pays the matching down payment or deposit with the escrow agent acting on behalf of the selling Owner, shall be permitted to purchase the Unit.

Closing shall take place within ten (10) days after payment is made to the escrow agent of the matching down payment or deposit or on the date provided in the original offer, whichever is later.

Section 12.2 Failure to Comply. In the event any Owner shall attempt to sell his Unit without affording to the other Owners the right of first refusal provided in this Article, such sale shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser, lessee or tenant who shall be subject to eviction and removal forcibly or otherwise with or without process of law.

Section 12.3 No Restriction on Mortgages. In no case shall the right of first refusal reserved in this Article affect the right of an Owner to subject his or her Unit to a bona fide trust deed, Mortgage or other security instrument.

Section 12.4 Failure to Exercise. The failure of or refusal by the Owners to exercise the right to so purchase shall not constitute or be deemed to be a waiver of such right to purchase when an Owner receives any subsequent bona fide offer from a prospective purchaser.

Section 12.5 Binding on Successor Grantees. Except as is otherwise provided in Section 12.6, and except upon a transfer of title to a Public Trustee or to a First Mortgagee each and every conveyance by a grantor(s) of a Unit shall be, for all purposes, deemed to include and incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the right of first refusal as provided in this Article.

Section 12.6 Exemption from Right of First Refusal. In the event of any default on the part of any Owner under any First Mortgage which entitles the holder the First Mortgagee to foreclose, any sale under such foreclosure, including delivery of a deed to the First Mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of this Article 12, and the purchaser (or grantee under a deed given in lieu of such foreclosure) shall be the then holder of the First Mortgage, or its nominee, and the holder or nominee may thereafter sell and convey the condominium Unit free and clear of the provisions of this Article 12, but its grantee shall thereupon and thereafter be subject to all of the provisions of this Article 12.

Section 12.7 Exemption from Right of First Refusal - Other. The following transfers are also exempt from the provisions of this Article 12 regarding the right of first refusal: (a) the transfer to an existing Owner of the Unit; (b) the transfer by operation of law of a deceased joint tenant's interest to the surviving joint tenant(s); (c) the transfer of a deceased's interest to a devisee by will, trust or his or her heirs at law under intestacy laws; (d) the transfer of all or any part of a partner's interest as a result of withdrawal, death or otherwise to the remaining partners carrying on a partnership business and/or to a person or persons becoming partners, or a transfer of all or part of a partner's or partners' interest between one or more partners and/or to persons becoming partners; (e) the transfer of all or any part of an owner's interest to a corporation or limited liability company, provided, however, that at least fifty percent (50%) of the ownership of such corporation or limited liability company is thereafter owned and retained by that Owner, or a transfer of ownership by one or more owners of a corporation or limited liability company owning a Unit, provided, however, that at least fifty per cent (50%) of the ownership is retained

by the remaining owners of the corporation or limited liability company; (f) the transfer by gift; (g) the transfer of an owner's interest to a trustee provided, however, that the Owner transferring the interest is the beneficiary of at least fifty percent (50%) interest in the trust. Such persons, owners, grantees or donees acquiring an interest shall be subject to all of the provisions of this Article with regard to the right of first refusal except as is provided herein.

Section 12.8 Certificate of Compliance - Right of First Refusal. Upon written request of any prospective transferor, purchaser or an existing or prospective mortgagee of any Unit, the Owner of the Unit subject to the sale shall forthwith, or where time is specified, at the end of the time, issue a written certificate in recordable form evidencing that: (a) with respect to a proposed sale under this Article 12, proper notice was given by the Owner of the Unit subject to the sale and the remaining Owners did not elect to exercise their option to purchase; (b) with respect to a deed to a First Mortgagee or its nominee in lieu of foreclosure, a deed from such First Mortgagee or its nominee, pursuant to Section 12.6, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of this Article 12; (c) with respect to any contemplated transfer which is not, in fact, a sale, that the transfer will not be subject to the provisions of this Article 12; and such a certificate shall be conclusive evidence of the facts contained therein.

### ARTICLE 13 DAMAGE OR DESTRUCTION

Section 13.1 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 13.2 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 13.3 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 13.4 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 not sufficient 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 in sufficient to complete the repair, replacement or reconstruction.

Section 13.5 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.

Section 13.6 Obsolescence. Owners representing a seventy-five percent ownership interest, or more, in the Common Elements may agree by written consent that the Units are obsolete and adopt a plan for the renewal and reconstruction, which shall have the unanimous approval of all First Mortgagees of record at the time of the adoption of such plan. If a plan for renewal and reconstruction is adopted, notice of such plan shall be recorded in the real estate records of the Clerk and Recorder for Pitkin County. The expenses of creating and carrying out the plan for renewal and reconstruction shall be payable by all Owners of Units as Common Expenses or through other means of financing as approved by those Owners consenting to the plan for renewal and reconstruction; provided, however, that an Owner not consenting to or voting in favor of the plan for renewal and reconstruction may give written notice to the Association within fifteen (15) days after the recording of such plan for renewal and reconstruction, that the Unit shall be purchased by the Association, or another purchaser designated by the Association or the Owner of the Unit, for the fair market value of the Unit. The Association shall have fifteen days following such written notice to cancel the plan for renewal and reconstruction.

If the plan for renewal or reconstruction is not canceled by the Association, then the Unit shall be purchased by the Association, or by another purchaser designated by the Association or Owner of the Unit, according to the following procedures:

- (a) If the Owner sells the Unit to a purchaser other than the Association or the Association's designated purchaser, then the Owner of the Unit and purchaser shall



determine the purchase price of the Unit and a condition of the sale shall be that the purchaser consents to the plan for renewal and reconstruction.

(b) If the Association, or a purchaser designated by the Association, purchases the Unit, the Owner of the Unit and the Association shall act in good faith to agree upon the fair market value price for the Unit. If the parties are unable to agree upon a fair market value price within ten (10) days following the Owner providing written notice to the Association that the Association must purchase the Owner's Unit, then upon that period of time lapsing each party shall nominate in writing (and give notice of such nomination to the other party) an independent appraiser. If either party fails to make such a nomination, the appraiser nominated in writing by one of the two parties shall be the appraiser who shall determine the fair market value of the Unit which shall be binding and final. If each party designates an appraiser and the appraisers are unable to agree upon a fair market value for the Unit, they shall appoint another independent appraiser to act as an umpire between them. The decision of the appraisers as to the fair market value of the Unit shall be binding and final. If the appraisers, with the assistance of an umpire, are unable to come to an agreement on the fair market value of the Unit, then the decision of the umpire shall be binding and final. The expenses and fees of such appraisers shall be borne equally by the Association and Owner. The sale shall be consummated within fifteen days after a final and binding decision has been rendered on the fair market value of the Unit and a condition of the sale shall be that the purchaser consents to the plan for renewal and reconstruction.

In lieu of procedure set forth above in this Section 13.6 relating to obsolescence, if all Owners of Units in the Association and all First Mortgagees agree in writing that the Units are obsolete and should be sold, then the Association shall record a notice in the real estate records of the Clerk and Recorder of Pitkin County that the entire Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of provisions contained in this Declaration, the Map, the Articles of Incorporation and Bylaws. The sales proceeds shall be apportioned between the Owners based on their percentage ownership interest in the Common Elements and the funds shall be deposited in a separate account for each Unit. The Association, acting as attorney-in-fact, shall disburse the funds for each Unit in the following order: (i) for payment of the balance of the lien of any first Mortgage; (ii) for payment of taxes; (iii) for payment of unpaid Assessments; (iv) for payment of junior Mortgages and encumbrances in order of and to the extent of their priority; and (v) the balance remaining, if any, shall be paid to the Owner of the Unit.

#### ARTICLE 14 CONDEMNATION

Section 14.1 Rights of Owners. Whenever all or any part of the Common Elements is taken by power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed by the Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain in lieu of a taking under threat of condemnation, each Owner shall be entitled to notice of the taking or conveying.

The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 14.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners to whom at least sixty-seven percent (67%) of the ownership interests in the Common Elements are allocated shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to offset future expenses of the Association.

Section 14.3 Complete Condemnation. If all of the Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of Eligible Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in the Colorado Revised Nonprofit Corporation Act upon liquidation of the Association.

ARTICLE 15  
ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 8, (b) purchasing and maintaining insurance pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 13, (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 14, 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 Project 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 16  
ALTERATIONS, ADDITIONS OR IMPROVEMENTS  
TO COMMON ELEMENTS

Section 16.1 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, street numbers, signage, doors or windows), or which in any manner affect the Common Elements (by way of example and not by way of limitation, addition of air conditioning units, hot tubs, spas, fireplaces, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the 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. The Board shall respond to any written request for approval of a proposed addition, alteration or improvement within thirty (30) days after the complete submission of the plans, specifications and other materials and information which the Board may require in conjunction therewith. If the Board fails to approve or disapprove any request within thirty (30) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Board. In the event the Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment 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 16.2 Governmental Approval: If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided approval has been given by the 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 16.3 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 16.4 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 17  
MORTGAGEE'S RIGHTS

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

Section 17.1 Title Taken by First Mortgagee. Any First Mortgagee of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosure, whichever is earlier.

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

Section 17.3 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges 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 property insurance coverage on the lapse of a policy for such Common Elements, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 17.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee 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 days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.

Section 17.5 Notice of Action. Any 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:

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

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

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

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

Section 17.6 Action by Mortgagee. If this Declaration requires Eligible Mortgagees to approve or consent to amendments, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each Eligible Mortgagee at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. 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 amendment.

Section 17.7 Junior Mortgages. The Owner of a Unit may create junior Mortgages on the following conditions: (1) 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; (2) that the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his 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 18 DURATION OF COVENANTS AND AMENDMENT

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

Section 18.2 Amendment. This Declaration, or any provision of it, may be amended at any time by approval of Owners to whom at least fifty-five percent (55%) of ownership interests in the Common Elements are allocated, except that approval shall first be obtained from fifty-one percent (51%) of Eligible Mortgagees if the amendment to the Association Documents add or delete any material provisions which establish, provide for, govern or regulate any of the following, except as otherwise provided herein:

18.2.1 Voting rights;

18.2.2 Assessments, increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens or the priority of such liens;

18.2.3 Reductions in reserves for maintenance, repair and replacement of the Common Elements;

18.2.4 Responsibility for maintenance and repairs;

18.2.5 Reallocation of interests in the Common Elements, or rights to their use;

18.2.6 Redefinition of boundaries of any Unit;

18.2.7 Convertibility of Units into Common Elements or of Common Elements into Units;

18.2.8 Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;

18.2.9 Hazard or fidelity insurance requirements;

18.2.10 Imposition of any restrictions on the leasing of Units, other than as set forth herein;

18.2.11 Imposition of any restrictions on an Owner's right to sell or transfer his Unit;

18.2.12 A decision by the Association to establish self-management if professional management has been required previously by any Agency;

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

18.2.14 Any provision which is for the express benefit of an Agency or First Mortgagee.

Section 18.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least sixty-seven percent (67%) of Eligible Mortgagees and Owners to whom at least fifty-five percent (55%) of ownership interests in the Common Elements are allocated have given their prior written approval, the Association may not, except as otherwise provided herein:

18.3.1 By act or omission seek to abandon or terminate the condominium regime hereby;

18.3.2 Reallocate the Allocated Interest or obligation of any Unit in order to levy Assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Allocated Interests of Ownership of Common Elements other than as set forth in this Declaration;

18.3.3 Partition or subdivide any Unit, except as set forth in this Declaration;

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

18.3.5 Use hazard insurance proceeds for losses to any part of the Project (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Project.

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

#### ARTICLE 19 LIMIT ON TIMESHARING

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

#### ARTICLE 20 GENERAL PROVISIONS

Section 20.1 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner required by Colorado law to be given by personal delivery or by United States mail shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, on the third business day after deposit in the U.S. mail, at the address of record for real property tax assessment notices with respect to that Owner's Unit. Any other

notice may be given by electronic mail to an e-mail address provided by the Owner, and shall be effective upon confirmation of sending to the e-mail address.

Section 20.2 Enforcement. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action for any matter 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, or by mediation. The prevailing party in any judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorneys' fees in connection with such judicial relief. 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. The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based on hardship, expense or other reasonable criteria, to pursue enforcement action. In any action taken by the Association to levy fines against an Owner for failure to comply with the Association Documents, the Association shall comply with the provisions of its policy and procedures concerning enforcement of covenants and Rules as required by the Act.

Section 20.3 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 20.4 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

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In Witness Whereof the undersigned certifies that the above and foregoing Amended and Restated Condominium Declaration for Timber Ridge Corporation, A Condominium Association was approved by consent of Owners representing not less than sixty-seven percent (67%) of the aggregate interest in the General Common Elements or that such approval was obtained pursuant to C.R.S. 38-33.3-217, and further, that all of the holders of any recorded mortgage or deed of trust covering or affecting any of the condominium Units have provided their written consent, or, pursuant to C.R.S. 38-33.3-217, are deemed to have approved this Amended and Restated Condominium Declaration for Timber Ridge Corporation, A Condominium Association.

Timber Ridge Corporation, A Condominium Association, a Colorado nonprofit corporation

DIANE RENE SPICER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20164007791  
MY COMMISSION EXPIRES FEB 25, 2020

By: David Ellis, President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF PITKIN )

The foregoing instrument was acknowledged before me this 20 day of SEPTEMBER 2019 by DAVID ELLIS as PRESIDENT of Timber Ridge Corporation, A Condominium Association.

Witness my hand and official seal.

My commission expires: FEB 25, 2020 Diane R Spicer  
Notary Public

EXHIBIT A  
REAL PROPERTY SUBJECT TO THE DECLARATION

Lots 1, 2, 3, and 4, Block 4, Eames Addition, to the City and Townsite of Aspen, County of Pitkin, State of Colorado.

AND

PROPERTY DESCRIPTION 5

A parcel of land situated in the Northeast 1/4 of Section 13, Township 10 South, Range 85 West, between Block 4 and Block 6, Eames Addition, City of Aspen, County of Pitkin, described as follows:

Commencing at a 3.5" Aluminum Cap, Drexel Barrell GPS control PLS 28650 as shown on the City of Aspen Monumentation Map dated September 23, 1999, also being the approximate intersection of Hopkins Avenue and Garmisch Street; thence S.08°44'40"W'., a distance of 1,025.37 feet to the POINT OF BEGINNING, also being the Southeast corner of Lot 4 of Block 4 of the Eames Addition; thence S. 14°50 '49"W'., a distance of 11.99 feet to a point on the southerly boundary of that property described in Civil Action #3982 in the District Court dated April 3. 1969; thence along said southerly boundary a distance of 30.70 feet along the arc of a non-tangent curve to the right having a radius of 598.69 feet and a central angle of 02°56 '18", chord bears N. 52°09'49"W'., a distance of 30.70 feet to a point on the southerly boundary of Block 4 of the Eames Addition; thence along said southerly boundary S 75°09'11"E., a distance of 28.24 feet to the POINT OF BEGINNING.

Containing 173.53 square feet or 0.0040 acres, more or less.

EXHIBIT B  
ALLOCATED INTERESTS

Unit	Percentage Share of Common Expenses Allocated to Each Unit	Percentage Share of Undivided Ownership Interest in the Common Elements Allocated to Each Unit	Number of Votes Allocated to Each Unit
<b>1A</b>	5.15	1/21st	1/21st
<b>1B</b>	4.54	1/21st	1/21st
<b>1C</b>	3.59	1/21st	1/21st
<b>1D</b>	4.57	1/21st	1/21st
<b>1E</b>	3.66	1/21st	1/21st
<b>1F</b>	4.54	1/21st	1/21st
<b>1G</b>	5.15	1/21st	1/21st
<b>2A</b>	5.62	1/21st	1/21st
<b>2B</b>	5.13	1/21st	1/21st
<b>2C</b>	3.85	1/21st	1/21st
<b>2D</b>	5.11	1/21st	1/21st
<b>2E</b>	3.92	1/21st	1/21st
<b>2F</b>	4.11	1/21st	1/21st
<b>2G</b>	6.66	1/21st	1/21st
<b>3A</b>	5.62	1/21st	1/21st
<b>3B</b>	5.13	1/21st	1/21st
<b>3C</b>	3.85	1/21st	1/21st
<b>3D</b>	5.11	1/21st	1/21st
<b>3E</b>	3.92	1/21st	1/21st
<b>3F</b>	4.11	1/21st	1/21st
<b>3G</b>	6.66	1/21st	1/21st
<b>Total</b>	<b>100.00</b>		