

**DECLARATION OF THE  
COVENANTS AND RESTRICTIONS  
FOR THE  
PLAZA AT ASPEN VILLAGE**

**Declaration of the  
Covenants and Restrictions  
for  
The Plaza at Aspen Village**

**TABLE OF CONTENTS**

**RECITALS:**..... 1

**ARTICLE I DECLARATION AND SUBMISSION** ..... 1

**ARTICLE II DEFINITIONS** ..... 1

    2.1 Allocated Interest..... 1

    2.2 Annual Assessment..... 2

    2.3 Articles..... 2

    2.4 Assessments..... 2

    2.5 Association..... 2

    2.6 Association Documents ..... 2

    2.7 Bylaws..... 2

    2.8 Clerk and Recorder..... 3

    2.9 Common Element..... 3

    2.10 Common Expenses ..... 3

    2.11 Condominium..... 3

    2.12 County..... 3

    2.13 Declaration..... 3

    2.14 Eligible Mortgagee..... 3

    2.15 Executive Board..... 3

    2.16 First Mortgage..... 4

    2.17 First Mortgagee..... 4

    2.18 Future Development Property..... 4

    2.19 General Common Elements ..... 4

    2.20 Limited Common Elements ..... 4

    2.21 Manager..... 4

    2.22 Map..... 4

    2.23 Member..... 4

    2.24 Mortgage..... 4

    2.25 Mortgagee..... 4

    2.26 Owner..... 5

    2.27 Owner's Agent..... 5

    2.28 Project..... 5

    2.29 Successor Declarant..... 5

    2.30 Supplemental Declaration..... 5

    2.31 Supplemental Map..... 5

    2.32 Town..... 5

    2.33 Unit..... 5

**ARTICLE III - NAME AND DIVISION INTO UNITS**..... 5

    3.1 Name..... 5

    3.2 Association..... 5

3.3	Number of Units .....	6
3.4	Identification of Units .....	6
3.5	Description of Units; Use .....	6
3.6	Animals .....	6
3.7	Parking .....	6
3.8	Signs .....	7
3.9	Utilities .....	7
3.10	Refuse and Trash .....	7
3.11	Landscaping .....	7
3.12	Satellite Dishes, Receivers and Antennae .....	7
3.13	No Hazardous or Unsafe Activities .....	8
3.14	No Obstruction .....	8
 <b>ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS .....</b>		<b>8</b>
4.1	The Association .....	8
4.2	Transfer of Membership .....	8
4.3	Membership .....	8
4.4	Declarant Control .....	9
4.5	Provision of Information/Books and Records .....	9
4.6	Public Disclosures and Notice .....	10
4.7	Owner Education .....	10
4.8	Manager .....	11
 <b>ARTICLE V - POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION .....</b>		<b>11</b>
5.1	Executive Board and Officers .....	11
5.2	Powers of the Board .....	11
5.3	Promulgation of Rules .....	12
5.4	Responsible Governance Policies .....	13
5.5	Executive Board Education .....	13
 <b>ARTICLE VI - RIGHT TO NOTICE AND COMMENT .....</b>		<b>14</b>
 <b>ARTICLE VII - MECHANIC'S LIENS .....</b>		<b>14</b>
7.1	No Liability .....	14
7.2	Indemnification .....	14
7.3	Association Action .....	14
 <b>ARTICLE VIII - EASEMENTS .....</b>		<b>15</b>
8.1	Recorded Easements .....	15
8.2	Declarant's Rights Incident to Construction .....	15

8.3	Utility Easements.....	15
8.4	Reservation of Easements, Exceptions and Exclusions.....	15
8.5	Emergency Access Easement.....	16
8.6	Support Easement.....	16
<b>ARTICLE IX - MAINTENANCE.....</b>		<b>16</b>
9.1	Maintenance by Owners.....	16
9.2	Owner's Failure to Maintain or Repair.....	16
9.3	Maintenance by Association.....	17
9.4	Association Maintenance as Common Expense.....	17
9.5	Easement for Maintenance.....	17
9.6	Limited Common Element Damage.....	18
9.7	Association Power.....	18
<b>ARTICLE X - INSURANCE.....</b>		<b>18</b>
10.1	General Insurance Provisions.....	18
10.2	Certificates of Insurance; Cancellation.....	20
10.3	Insurance Proceeds.....	20
10.4	Insurer Obligation.....	20
10.5	Repair and Replacement.....	20
10.6	Common Expenses.....	21
10.7	Fidelity Insurance.....	21
10.8	Workers' Compensation Insurance.....	22
10.9	Other Insurance.....	22
<b>ARTICLE XI - ASSESSMENTS.....</b>		<b>22</b>
11.1	Obligation.....	22
11.2	Budget.....	22
11.3	Annual Assessments.....	22
11.4	Apportionment of Annual Assessments.....	23
11.5	Special Assessments.....	23
11.6	Default Assessments.....	23
11.7	Effect of Nonpayment; Assessment Lien <sup>24</sup> .....	24
11.8	Personal Obligation.....	24
11.9	Payment by Mortgagee.....	25
11.10	Statement of Status of Assessment Payment.....	25
11.11	Capitalization of the Association.....	25
11.12	Maintenance Accounts; Accounting.....	26
<b>ARTICLE XII - DAMAGE OR DESTRUCTION.....</b>		<b>26</b>
12.1	The Role of the Executive Board.....	26
12.2	Estimate of Damages or Destruction.....	26

12.3	Repair and Reconstruction .....	26
12.4	Funds for Repair and Reconstruction .....	27
12.5	Disbursement of Funds for Repair and Reconstruction.....	27
<b>ARTICLE XIII - CONDEMNATION.....</b>		<b>27</b>
13.1	Rights of Owners .....	27
13.2	Partial Condemnation; Distribution of Award; Reconstruction.....	27
13.3	Complete Condemnation.....	28
<b>ARTICLE XIV - ASSOCIATION AS ATTORNEY-IN-FACT .....</b>		<b>28</b>
<b>ARTICLE XV - ARCHITECTURAL CONTROL AND DESIGN REVIEW .....</b>		<b>29</b>
15.1	Common Elements .....	29
15.2	Architectural Review Committee.....	29
15.3	Membership .....	29
15.4	Design Guidelines .....	29
15.5	Requirement for Approval .....	30
15.6	Criteria for Approval .....	30
<b>ARTICLE XVI - RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS.....</b>		<b>31</b>
16.1	Addition of Unspecified Real Estate .....	31
16.2	Reserved Development Rights of Expansion.....	31
16.3	Reservation of Withdrawal Rights .....	32
16.4	Other Reserved Rights .....	32
16.5	Termination of Rights Reserved .....	33
16.6	Phasing of Development Rights .....	33
16.7	Deannexation.....	33
16.8	Amendment of Reserved Rights .....	34
<b>ARTICLE XVII - MANDATORY DISPUTE RESOLUTION .....</b>		<b>34</b>
17.1	Statement of Clarification .....	34
17.2	Alternative Method for Resolving Disputes .....	34
17.3	Claims .....	34
17.4	Claims Subject to Approval .....	35
17.5	Notice of Claim .....	35
17.6	Timely Initiation .....	36
17.7	Right to be Heard.....	36
17.8	Right to Inspect .....	36
17.9	Good Faith Negotiations .....	37
17.10	Mediation .....	37
17.11	Consensus for Association, Arbitration or Litigation.....	38

17.12	Arbitration .....	38
17.13	Binding Affect .....	39
17.14	Amendment .....	39
<b>ARTICLE XVIII - MORTGAGEE'S RIGHTS .....</b>		<b>39</b>
18.1	Title Taken by Mortgagee .....	39
18.2	Distribution of Insurance or Condemnation Proceeds .....	39
18.3	Right to Pay Taxes and Charges .....	39
18.4	Audited Financial Statement .....	40
18.5	Notice of Action .....	40
18.6	Action by Mortgagee .....	40
<b>ARTICLE XIX - DURATION OF COVENANTS AND AMENDMENT .....</b>		<b>40</b>
19.1	Term .....	40
19.2	Amendment .....	41
19.3	Amendment for Certain Actions .....	42
19.4	Recordation of Amendment .....	42
<b>ARTICLE XX - LIMIT ON TIMESHARING .....</b>		<b>43</b>
<b>ARTICLE XXI - GENERAL PROVISIONS .....</b>		<b>43</b>
21.1	Restriction on Declarant Powers .....	43
21.2	Enforcement. ....	43
21.3	Severability.....	43
21.4	Conflicts Between Documents .....	43
21.5	Number and Gender.....	43
21.6	No Dedication.....	43
21.7	Applicable Law, Jurisdiction and Venue .....	43
21.8	Run With the Land .....	44
21.9	CCIOA Provisions.....	44
21.10	Binding Effect. ....	44
21.11	Consent of Trust Deed Beneficiaries.....	44

**DECLARATION OF THE COVENANTS AND RESTRICTIONS  
FOR THE PLAZA AT ASPEN VILLAGE**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** (this "Declaration") is made as of December 10, 2006, by Aspen Partners Pagosa, LLC, a Colorado limited liability company (the "Declarant") whose address is 390 Boulder Drive, Suite 220, Pagosa Springs, Colorado 81147.

**RECITALS:**

A. Declarant is the owner of that certain real property located in the Town of Pagosa Springs, County of Archuleta, State of Colorado, more particularly described as:

Lot 1, Block 7, Aspen Village Phase 2, Planned Unit Development,  
Town of Pagosa Springs, County of Archuleta, State of Colorado,  
Filed As Reception No. 20510843 in the Office of the Archuleta  
County Clerk and Recorder.

(the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in C.R.S. § 38-33.3-101 *et seq.* (the "Act") on the Property.

**ARTICLE I  
DECLARATION AND SUBMISSION**

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant submits the Property to the provisions of the Act.

**ARTICLE II  
DEFINITIONS**

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

2.1 **"Allocated Interest"** means the undivided interest in the Assessments and votes in the Association allocated to each Unit, which interests are allocated as follows:



2.1.1 *Percentage Share of Common Expenses and Percentage Share of Ownership in Common Elements.* The liability of each Unit shall be determined on the basis of a fraction, the numerator of which is the square footage within a Unit and the denominator of which is the total number square footage of all Units in the Association as of the date of the calculation.

2.1.2 *Voting.* The Association shall have one class of voting membership consisting of all Owners, including Declarant so long as Declarant owns an interest in a Unit. The voting rights allocated to each Unit shall be determined as a fraction, the numerator of which is the total square footage comprising a Unit and the denominator of which is the total square footage of all Units within the Project as of the date of the calculation.

2.1.3 The Allocated Interests and voting rights of the Units in the Project are set forth on Exhibit A attached hereto.

2.1.4 If Units are added to or withdrawn from the Association (i) the Common Expenses liability for each Unit and the voting rights shall be reallocated on the basis of the formulas set forth in Article 2.1.1 and 2.1.2 following the addition or withdrawal of such Units.

2.2 *"Annual Assessment"* means the Assessment levied pursuant to an annual budget.

2.3 *"Articles"* means the Articles of Incorporation for The Plaza at Aspen Village Owners Association, a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State and any amendments that may be made to those Articles from time to time.

2.4 *"Assessments"* means the Annual, Special and Default Assessments levied pursuant to Article XI below. Assessments are also referred to as Common Expense Liability as defined under the Act.

2.5 *"Association"* means The Plaza at Aspen Village Owners Association, a Colorado nonprofit corporation, and its successors and assigns.

2.6 *"Association Documents"* means this Declaration, the Articles of Incorporation, the Bylaws, the Map, the Design Guidelines and any procedures, rules, regulations or policies adopted under such documents by the Association. All provisions of the Association Documents shall be given the same force and effect as if set forth in the Declaration.

2.7 *"Bylaws"* means the Bylaws adopted by the Association, as amended from time to time.

2.8 "***Clerk and Recorder***" means the office of the Clerk and Recorder in the County of Archuleta, State of Colorado.

2.9 "***Common Element***" means all portions of any Condominium that may be created within the Project other than the Units within that Condominium. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interests described in Article 2.1, and consists of General Common Elements and Limited Common Elements.

2.10 "***Common Expenses***" means (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) costs of utilities and services (including but not limited to, water, electricity, gas, sewer, trash pick-up and disposal and recycling), which are provided to the Association and not individually metered or assessed to Units, landscaping maintenance and other services which generally benefit and enhance the value and desirability of the Project and which are provided by or on behalf of the Association; (iv) reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Executive Board to meet anticipated costs and expenses (v) insurance premiums for the insurance carried under Article X; and (vi) all expenses lawfully determined to be Common Expenses by the Executive Board.

2.11 "***Condominium***" means any part of the Project in which portions of the real estate are designated for separate ownership and the remaining real estate is designated for common ownership in undivided interests solely by the owners of said units.

2.12 "***County***" means the County of Archuleta, State of Colorado.

2.13 "***Declaration***" means this Declaration and the Map and any amendments and supplements to the foregoing.

2.14 "***Eligible Mortgagee***" means a First Mortgagee (as hereinafter defined) who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address and that it holds the First Mortgage on one or more Units. The notice must include the Unit number and street address of the Unit on which it has security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in Articles XVIII and XIX below.

2.15 "***Executive Board***" shall mean the governing board of the Association.

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

2.17 ***“First Mortgagee”*** means any person named as a Mortgagee in any First Mortgage.

2.18 ***“Future Development Property”*** means as many as five (5) additional buildings and/or amenities that may be constructed on the Property in the future and to which the Declarant reserves the right, but shall have no obligation, to develop into additional Units, Common Elements or easements through one or more Supplemental Declarations. Such development may occur in all or any portion of the Property and shall be accomplished by the recording of a Supplemental Declaration, together with a Supplemental Map, which describes and depicts any new Units, Common Elements or Limited Common Elements thereby created. The Supplemental Declarations shall incorporate this Declaration and shall set forth such amendments to this Declaration and such additional covenants, conditions, uses, restrictions and reserved development rights as may be applicable to the Future Development Property.

2.19 ***“General Common Elements”*** means all portions of any Condominium that may be created within the Project except Limited Common Elements and the Units.

2.20 ***“Limited Common Elements”*** means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a map or by the action of the Association for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all Owners.

2.21 ***“Manager”*** means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

2.22 ***“Map”*** means the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or part of the Property subject to this Declaration and any supplements and amendments thereto.

2.23 ***“Member”*** means every person or entity that holds membership in the Association.

2.24 ***“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.

2.25 ***“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.

2.26 "**Owner**" means the owner of record, whether one or more persons or entities, a 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.

2.27 "**Owner's Agent**" means members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenant.

2.28 "**Project**" means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

2.29 "**Successor Declarant**" means any person or entity to whom Declarant assigns any or all of its rights, obligation or interest as Declarant, as evidence by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

2.30 "**Supplemental Declaration**" means an instrument which amends this Declaration.

2.31 "**Supplemental Map**" means a Supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

2.32 "**Town**" shall mean the Town of Pagosa Springs, Colorado.

2.33 "**Unit**" means a physical portion of the Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from these Declarations and the Map.

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

### ARTICLE III NAME AND DIVISION INTO UNITS

3.1 **Name.** The name of the Project is The Plaza at Aspen Village. The Project is a Condominium pursuant to the Act.

3.2 **Association.** The name of the Association is The Plaza at Aspen Village Owners Association. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

3.3 **Number of Units.** There are six (6) Commercial Units within the Project. Declarant reserves the right to expand the Project to a maximum number of 30 Units, provided, however, the Declarant reserves the right to subdivide Units (and thereby create additional Units up to the maximum number allowable by any governmental entity

having jurisdiction over the Real Estate (the "Maximum Units")) all as more particularly set forth in this Declaration.

3.4 **Identification of Units.** The identification number and street address of each Unit is shown on the Map.

3.5 **Description of Units; Use.**

3.5.1 Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as one Unit, except as described herein. 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, THE PLAZA AT ASPEN VILLAGE, County of Archuleta, State of Colorado, according to the Condominium Map thereof recorded on December 11, 2006, at Reception No. 20611919, and the Declaration recorded on December 11, 2006, at Reception No20611920, in the records of the Clerk and Recorder of the County of Archuleta, State of Colorado, as amended from time to time.

3.5.3 Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit. The use of each Unit shall be limited to commercial purposes (which use may include commercial, retail, private business offices and professional offices) provided, however, that no Unit may be used for heavy industrial or manufacturing and no sales of printed or visual materials containing "X-rated" content or content restricted to person "18 or over" shall be permitted on the Property. In order to promote a diverse and successful business community, any change in the use or business conducted in a Unit must have the prior approval of the Executive Board during the period of Declarant Control. The Executive Board, in its sole discretion, shall have the right to regulate or prohibit any use that would create a common law nuisance or is prurient in nature. As used herein, the term "nuisance" shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Project or any part thereof. No Owner shall permit any use of a Unit or make use of the Common Elements that will unreasonably increase the rate of insurance upon the Project.

3.6 **Animals.** Unsupervised pets are not permitted on the Property. The Executive Board shall have the right to adopt reasonable rules and regulations for the Units concerning pets, including their number, control outside the Unit, noise and sanitation.

3.7 **Parking.** Declarant reserves the right to assign all parking spaces in connection with the sale of Units. Upon the assignment of a parking space, such parking

space shall be considered a Limited Common Element associated with the Unit designated and shall be deemed to be appurtenant to and pass with the title to the Unit to which appurtenant even though not expressly mentioned in the document passing title to the Unit. Subject to the foregoing, the Executive Board may prescribe such rules and regulations with respect to such parking as the Executive Board may deem fit and a Unit Owner's exclusive use and reassignment shall be subject to such rules and regulations. No parking space may be owned by anyone other than the Declarant, a Unit Owner or the Association.

3.8 *Signs.* The Owner of each Unit shall be entitled to place and maintain at its expense signage identifying the business conducted therein, subject to the Owner first obtaining the prior written approval of the Executive Board and provided such signage complies with the rules and regulations of the Town.

3.9 *Utilities.* Each Unit shall have its own individual electric meters, gas, telephone cable and data service and shall be responsible for payment of all costs associated with the same. Common meters for gas, electricity and water shall be maintained by the Association for the General Common Elements and Limited Common Elements and the expenses of the same shall be Common Expenses. The Association may monitor Commercial Units usage of gas and water or establish a reasonable additional allocation for Commercial Unit demands and charge individual Commercial Units for excessive usage.

3.10 *Refuse and Trash.* The Association shall arrange for the placement and maintenance of a dumpster at the Project for disposal of garbage and trash by those occupying a Unit. Such expense shall be a Common Expense. The Association may require that Commercial Units establish separate trash receptacles and establish individual accounts for their trash collection.

3.11 *Landscaping.* All landscaping improvements shall be constructed and installed within the Project pursuant to a landscaping plan adopted by Declarant.

3.12 *Satellite Dishes, Receivers and Antennae.* No exterior radio antenna, television antenna, or other antenna of any type (including satellite dishes) shall be erected or maintained in the Project except that: (a) an Owner may erect an antenna if: (i) such antenna is necessary to carry on the business conducted by the Owner on the Unit; (ii) the Association gives its consent to the erection of such an antenna in accordance with the provisions of Article 6 hereof; and (iii) if the erection of such antenna is in compliance with all applicable statutes, ordinances and regulations; and (b) the requirements of this Section shall not apply to those "antenna" (including certain satellite dishes) which are specifically covered by the Telecommunications Act of 1996, as amended from time to time. As to "antenna" which is specifically covered by the Telecommunications Act of 1996, the Association shall be empowered to adopt rules and regulations governing the types of "antenna" that are permissible hereunder and, to the extent permitted by the Telecommunications Act of 1996, as amended, establishing reasonable, non-discriminatory restrictions relating to appearance, safety, location and

maintenance of such "antennae." Any project shall also comply with the District Zoning Ordinances (D4 Regulations) of The Town of Pagosa Springs.

3.13 *No Hazardous or Unsafe Activities.* No activity shall be conducted on and no improvement shall be constructed on any property within the Project which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no explosives, gasoline or other volatile and/or incendiary materials or devices or any materials deemed hazardous substances under applicable environmental laws, rules or regulations shall ever be kept, stored, permitted to remain or be released on any Unit or elsewhere within the Project. Nothing contained in this Article 3.15 shall be construed so as to prohibit, limit or restrict in any manner Declarant's construction activities on the Future Development Property.

3.14 *No Obstruction.* There shall be no obstruction of any easements or drainage located within any Unit or Common Element, or any interference with the free use thereof, except such obstruction or interference as may be reasonably required in connection the construction, maintenance or repair thereof. The Association shall promptly take such action as may be necessary to abate or enjoin any such obstruction or interference, and shall have the right to enter upon a Unit for purposes of removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or correction activities shall be reimbursed to the Association by the Owner of the Unit, upon demand. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article XI of this Declaration.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS**

4.1 *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.

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

4.3 *Membership.* The Association shall have one class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

**4.4 Declarant Control.** Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Association's Executive Board and officers of the Association during the period commencing with the recording of this Declaration and terminating no later than the earlier of (a) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created on the Future Development Property to Owners other than Declarant; (b) two (2) years after the last conveyance of a Unit on the Future Development Property by Declarant in the ordinary course of business; or (c) two (2) years after the right to add new Units was last exercised by Declarant.

During said period of Declarant Control of the Association:

(i) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Unit Owners other than Declarant;

(ii) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than Declarant, not less than thirty-three and one-third (33 1/3 %) of the members of the Executive Board must be elected by Unit Owners other than Declarant.

At any time prior to the termination of the period of Declarant Control, the Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded with the Clerk and Recorder, but, in such event, Declarant may, at its option, require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

**4.5 Provision of Information/Books and Records.** Within ninety (90) days after assuming control from the Declarant, the Association shall make the information described in Section 209.4 of the Act and the following information available to Unit Owners upon reasonable notice in accordance with the Act:

4.5.1 The date on which the Association's fiscal year commences;

4.5.2 Its operating budget for the current fiscal year;

4.5.3 A list of the Association's current assessments, including both Annual and Special Assessments;

4.5.4 Its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;



4.5.5 The results of its most recent available financial audit or review for the fiscal year immediately preceding the current annual disclosure;

4.5.6 A list of all Association insurance policies, including, but not limited to, property, general liability, Association, director, and officer professional liability and fidelity policies. Such list shall include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed;

4.5.7 The Bylaws, Articles and rules and regulations;

4.5.8 The minutes of the Executive Board and member meetings for the fiscal year immediately preceding the current annual disclosure;

4.5.9 The Association's responsible governance policies adopted under Section 209.5 of the Act; and

4.5.10 A list of all assigned parking spaces and storage areas.

Such information shall be readily available to the Unit Owners at no cost and at their convenience. The provision of such information may be accomplished through a posting on an internet webpage with accompanying notice of the web address via first class mail or email, the maintenance of a literature table or binder at the Association's principal place of business; or mail or personal delivery. The cost of such distribution shall be accounted for as a Common Expense.

The Association shall maintain such other books and records as may be required under the Act. All financial and other records of the Association shall be made reasonably available for examination and copying by any Unit Owner and such Owner's authorized agents. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of Association records.

**4.6 *Public Disclosures and Notice.*** Pursuant to Section 209.4 of the Act, if the Association's address, designated agent or Manager changes, the Association shall make updated information available within ninety (90) days after the change. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

**4.7 *Owner Education.*** The Association shall provide, or cause to be provided, education to Owners at no cost on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association and the Executive Board under Colorado law. The criteria for compliance with this Section shall be determined by the Executive Board.

4.8 *Manager.* The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. Pursuant to Section 302 of the Act, the Association's contract with a Manager shall be terminable for cause without penalty to the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

**ARTICLE V  
POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION**

5.1 *Executive Board and Officers.* The affairs of the Association shall be conducted by an Executive Board and such officers as the Executive Board may elect or appoint in accordance with its Articles and Bylaws. The initial Executive Board shall be composed of three (3) members appointed by the Declarant.

5.2 *Powers of the Board.* Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

5.2.1 Adopt and amend bylaws and rules and regulations;

5.2.2 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;

5.2.3 Hire and terminate management agents and other employees, agents and independent contractors;

5.2.4 Institute, defend or intervene in mediation, arbitration, litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

5.2.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice;

5.2.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;

5.2.7 Cause additional improvements to be made as a part of the Common Elements;

5.2.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if: (a) Owners entitled to cast at least two-thirds (2/3) of the votes allocated in the Association agree to that

action, (b) the provisions of subsection 18.3.3 are followed with respect to approval of Eligible Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

5.2.9 Grant easements, leases, licenses and concessions through or over the Common Elements;

5.2.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

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

5.2.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

5.2.13 Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

5.2.14 Assign its right to future income, including the right to receive Assessments;

5.2.15 Exercise any other powers conferred by the Declaration or Association Bylaws;

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

5.2.17 Exercise any other powers necessary and proper for the governance and operation of the Association.

5.3 ***Promulgation of Rules.*** The Executive Board may adopt, amend, repeal and enforce rules and impose fines for violations thereof (after notice and an opportunity to be heard), as it deems necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration and the operation of the Association, including Units and the Common Elements. Any such rules and regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment or repeal of any rule or regulation shall be given in writing to each Owner and copies of the currently effective rules and regulations shall be made available to each Owner upon request and payment of the reasonable expense of copying the same. Each Owner shall comply with the rules regulations and shall be responsible and liable for any of its guests, invitees or agents

fully and timely complying with the rules and regulations. All rules shall be reasonable and uniformly applied under the same or similar circumstances; provided, however, that the Executive Board shall exercise its best judgment in recognizing individual circumstances which may require a temporary or permanent variance. The rules shall have the same force and effect as if they were part of this Declaration. In the event of a conflict between the rules and this Declaration, this Declaration shall prevail, but only to the extent that such rule invalidates a specific provision of this Declaration.

5.4 ***Responsible Governance Policies.*** Pursuant to Section 209.5 of the Act, the Executive Board, to promote responsible governance, shall:

5.4.1 Maintain accurate and complete accounting records and adopt policies, procedures and rules and regulations concerning:

5.4.1.1 Collection of unpaid Assessments;

5.4.1.2 Handling of conflicts of interest involving Board members;

5.4.1.3 Conduct of meetings which may refer to applicable provisions of the nonprofit code or other recognized rules and principles;

5.4.1.4 Enforcement of covenants and rules including notice and hearing procedures and the schedule of fines;

5.4.1.5 Inspection and copying of Association records by Unit Owners;

5.4.1.6 Investment of reserve funds;

5.4.1.7 Procedures for the adoption and amendment of policies, procedures and rules; and

5.4.1.8 Procedures for addressing disputes arising between the Association and Unit Owners.

5.5 ***Executive Board Education.*** The Board may authorize, and account for as a Common Expense, reimbursement of Board members for their actual and necessary expenses incurred in attending educational meetings and seminars on responsible governance of the Association. The course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of the Act.

**ARTICLE VI  
RIGHT TO NOTICE AND COMMENT**

Pursuant to Section 205(1)(o), before the Executive Board amends the Bylaws or adopts or amends rules, or at any other time the Executive Board so determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Owner may give notice and comment to the Owners of any matter affecting the Project and Owners shall then have the right to comment, orally or in writing, on the matter. Notice may be given to each Owner in writing, delivered personally or by mail, at such address as appears in the records of the Association, or notice shall be posted on an internet webpage with accompanying notice of the web address via first class mail or email or on a literature table, Association newsletter or binder at the Association's principal place of business. The cost of such distribution shall be accounted for as a Common Expense. The notice shall be given not less than thirty (30) days before the proposed action is to be taken. The notice shall invite comment to the Executive Board or an Owner, orally or in writing, no less than ten (10) days prior to the scheduled time of any meeting.

**ARTICLE VII  
MECHANIC'S LIENS**

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.

7.2 **Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at 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, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom;

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 affected against an individual Unit or Units.

## **ARTICLE VIII EASEMENTS**

8.1 ***Recorded Easements.*** The Property shall be subject to all easements as 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 VIII.

8.2 ***Declarant's Rights Incident to Construction.*** Declarant, for itself and its successors and assigns, the Association and/or for Owners in all future phases of the Project, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

8.3 ***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, telephone, cable tv, electricity pneumatic and/or vacuum air tube systems. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units 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 to locations.

8.4 ***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 Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

8.5 *Emergency Access Easement.* 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.

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

## ARTICLE IX MAINTENANCE

9.1 *Maintenance by Owners.* Each Owner shall maintain and keep in repair the interior of his or her Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners, and the Limited Common Elements allocated to the Unit (excluding the roofing elements and the parking spaces assigned pursuant to Article 3.7 herein which, despite consideration of the same as a Limited Common Element, shall be maintained by the Association as a General Common Element). All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of his Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors, windows and screens. Each Owner shall be responsible for the installation (which shall be complete within nine months of Owner's purchase of a Unit from Declarant) and maintenance of the landscaping, which is designated as Limited Common Elements appurtenant to his Unit. The Association reserves the right to grant the maintenance responsibility to the Unit Owner of certain areas on each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

9.2 *Owner's Failure to Maintain or Repair.* In the event that a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore 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 lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article XI of this Declaration.

9.3 ***Maintenance by Association.*** The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth in Section 9.1 above and unless necessitated by damage caused by the negligence, misuse or tortious act of a Unit Owner or Owner's Agent as set forth in Section 9.4 below), which shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and walls which Owner is not required to maintain as set forth in Section 9.1, gates, signage, irrigation systems, sidewalks, parking spaces, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. An Owner shall promptly report to the Executive Board, in writing, the need for any maintenance, repair or replacement of a Common Element. In the event of any disagreement as to need for or the responsibility of the Association to provide said maintenance, repair or replacement, the good faith decision of the Executive Board shall be final.

9.4 ***Association Maintenance as Common Expense.*** The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefore set forth in Article 2.1 herein. 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 or as a result of emergency repairs within another Unit at the insistence of the Association shall also be a Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of a Unit Owner or Owner's Agent, then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that an Owner or Owner's agent's negligence caused such damage, which must be timely paid.

9.5 ***Easement for Maintenance.*** Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article X are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.



9.6 *Limited Common Element Damage.* In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's Agent, the then Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's agent's negligence.

9.7 *Association Power.* The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express written consent of the Executive Board.

## **ARTICLE X INSURANCE**

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

10.1.1 *Hazard Insurance Coverage.* Insurance of fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the insured property including all of the Units and Common Elements, including all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which are to be financed by a Mortgage to be purchased by an agency, and excluding any betterments and improvements made by Unit Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Executive Board. In the event the Project has central heating or cooling or contains a steam boiler, coverage for loss or damage resulting from steam boiler and machinery equipment accidents in an amount equal to the lesser of \$2,000,000 or the insurable value of the buildings housing the boiler or machinery shall also be obtained. The Association shall obtain insurance covering the original specifications of each Unit. Each Unit Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit which increase the replacement value of his Unit. In the event that satisfactory arrangement is not made for additional insurance by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition

better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 hereof in the event the Association pays such premium for a Unit Owner.

Such hazard insurance policy must be written by an insurance carrier that has (a) a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, or (b) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition.

**10.1.2 Comprehensive Liability.** Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive 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 Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Pagosa Springs, Colorado area including automobile liability insurance if appropriate. The Executive 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 Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

The insurance policies 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 Unit Owners. Each Unit Owner shall be an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit, which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Unit Owner or member of the Unit Owner's household. No act or omission by any Unit Owner, unless acting within the scope of such Unit 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 Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit, casualty and public liability insurance coverage for each Unit and the Limited Common Elements associated therewith and workman's compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit.

**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 X shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be cancelled 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 Article X is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

**10.3 *Insurance Proceeds.*** Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance 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 10.5 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.

**10.4 *Insurer Obligation.*** An insurer that has issued an insurance policy for the insurance described in Section 10.1 and 10.7 or its agent shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of a Mortgage for Federal National Mortgage Association.

**10.5 *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:

10.5.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of sixty-seven percent (67%) of all Unit Owners;

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

10.5.3 There is a vote not to rebuild by (a) eighty percent (80%) of the votes allocated in the Association and entitled to vote and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

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

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a 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 Unit's Common Expenses Allocated Interests.

10.6 *Common Expenses.* Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units, or other insurance attributable to some but not all of the Units (such as boiler insurance), the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

10.7 *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) twenty-five thousand dollars (\$25,000) 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 name the Association as insured and shall contain waivers of all defenses based

upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

10.8 *Workers' Compensation Insurance.* The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

10.9 *Other Insurance.* The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a Member of the Executive Board or incurred by him in his capacity of or arising out of his status as a Member of the Executive Board. The Executive 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.

## ARTICLE XI ASSESSMENTS

11.1 *Obligation.* Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

11.2 *Budget.* The budget shall be submitted to the Owners, pursuant to Section 303(4) of the Act provided, however, eighty percent (80%) of the Owners may reject the budget. Common Expense Assessments shall be due and payable annually or in periodic installments, or in any other manner. Common Expense Assessments may begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs. The omission or failure of the Executive Board to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

11.3 *Annual Assessments.* Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 11.2 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the General Common Elements, care of grounds within the General Common Elements, routine repairs and renovations within the Common Elements, wages, common water and utility charges for the Common Elements, assessments to the Project from other nearby property that the Project is required to pay by virtue of existing agreements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements

within the Common Elements on a periodic basis, as needed. Any surplus funds derived from Assessments shall be transferred to the reserve fund or used for Association operations, in the Executive Board's sole discretion and by acceptance of a deed to his or her Unit, each Owner hereby directs the Executive Board to make this determination each year. Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

**11.4 Apportionment of Annual Assessments.** The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to Limited Common Elements and insurance premiums described in Section 10.6) to the Owners of those affected Units only.

**11.5 Special Assessments.** In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 11.5 shall not be construed as an independent source of authority of the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner or Owner's Agents shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

**11.6 Default Assessments.** All monetary 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.

**11.7 Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before ten (10) business days after its due date, 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) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish, not exceeding twenty-one percent (21%) 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; and
- (vi) Proceed with foreclosure as set forth in more detail below.
- (vii) Whether or not foreclosure is commenced, apply for the *ex parte* appointment of a receiver for a Unit.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**11.8 Personal Obligation.** Each Assessment against a Unit is the personal obligation of the person who owned the Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. Where there is more than one Owner, each shall be jointly and severally liable for all Assessments. No Owner may exempt himself from liability for the Assessment by



abandonment of his 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 or exercising any other remedy pursuant to the Declaration or the Act, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration, and all Owners shall be liable for payment of such fees and costs.

11.9 *Payment by Mortgagee.* Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment 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 Mortgage.

11.10 *Statement of Status of Assessment Payment.* Upon payment of a reasonable fee set from time to time by the Executive Board and 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, 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 over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

11.11 *Capitalization of the Association.* The Declarant shall establish an initial working capital fund equal to two-twelfths (2/12) of the estimated Annual Assessments for Common Expenses for each Unit subject to the terms of this Declaration, which amount shall be reimbursed to the Declarant upon the transfer of title to a Unit when that Unit's Owner makes the required working capital contribution set forth in this section. The working capital fund may be used by the Association for emergencies, insurance deductibles in the event of casualty or other loss, capital expenditures for repair or replacement of Common Elements, and such other expenses which do not occur on a regular and on-going basis, as may be determined by a majority of the Executive Board. The initial capital account shall be established and Annual Assessments shall commence for the first phase submitted to the terms of this Declaration upon the conveyance of the first Unit in the first phase of the Project by Declarant to a third-party purchaser. Thereafter, upon the submission of each new phase of the Project to the condominium regime created by this Declaration, Annual Assessments shall begin and the capital account shall be established for all Units added by the new phase. Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to two-twelfths (2/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Owner acquired title. Such payments shall not be



considered advance payments of Annual Assessments. The working capital deposit made by an Owner shall be returned to each Owner including Declarant upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve contributions, or construction costs, nor to makeup any budget deficits during the period of Declarant control.

11.12 *Maintenance Accounts; Accounting.* If the Association delegates powers of the Executive 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 and working capital accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

## ARTICLE XII DAMAGE OR DESTRUCTION

12.1 *The Role of the Executive Board.* Except as provided in Section 10.5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article X, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article X is sometimes referred to as the "Association-Insured Property").

12.2 *Estimate of Damages or Destruction.* As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive 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 of fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Executive Board or the insurance trustee, if any, determines to be necessary.

12.3 *Repair and Reconstruction.* As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and

all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4 *Funds for Repair and Reconstruction.* The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement 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 12.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of 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 like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

12.5 *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Association 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 distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in proportion to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

### ARTICLE XIII CONDEMNATION

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

13.2 *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 Declarant and Owners who represent at least sixty-seven percent (67%) of the votes allocated in the Association 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 XII 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 distributed among the Units according to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with each Unit's Allocated Interests of Percentage Share of Common Elements, first to the Mortgagees and then to the Owners, as their interests appear.

13.3 **Complete Condemnation.** If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.5 above.

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

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article VIII, (b) purchasing and maintaining insurance pursuant to Article X, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article X upon their damage or destruction as provided in Article XII, or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article XIII, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment,

deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

## **ARTICLE XV ARCHITECTURAL CONTROL AND DESIGN REVIEW**

15.1 *Common Elements.* No alteration or additions to the Common Elements of any kind (including, without limitation, change in color, texture, street number signage, doors or windows) shall be made unless first approved in writing by the Executive Board. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

15.2 *Architectural Review Committee.* There is hereby established an Architectural Review Committee (the "Committee") which shall be responsible for the establishment and administration of Design Guidelines (the "Design Guidelines") to carry out the purposes and intent of this Declaration and shall provide advice to the Executive Board on such matters as the Executive Board may request.

15.3 *Membership.* The Committee shall consist of individuals appointed by and responsible to the Executive Board. During the period of Declarant Control set forth in Section 4.4 of this Declaration, the number of members shall be determined by the Executive Board and such members need not be Owners. After the period of Declarant Control has passed, the Committee shall consist of three (3) members at least one (1) of whom shall be an Owner. Members of the Committee shall be appointed to serve for a period of time established by the Executive Board, but in no event for a period of less than one year. The Committee is authorized, upon approval of the Executive Board, to seek the advice of design professionals or other professionals if the need should arise. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the Executive Board.

15.4 *Design Guidelines.* The Committee shall adopt, establish and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be an Association Document, the terms of which shall be complied with by all Owners. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by unanimous approval of the Executive Board and shall be made available to all Owners and their representatives for review. Further, the Committee may recommend, and the Executive Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process

and design standards is not a substitute for compliance with Town or County building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Design Guidelines, the terms of this Declaration shall control.

**15.5 Requirement for Approval.** No exterior improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Committee showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Committee or Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within sixty (60) days of the submission by Owner of all information requested by the Committee and the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Improvements and alterations which are completely within an existing Unit on a Lot may be undertaken without such approval.

The Association, upon the unanimous approval by the Executive Board and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants, and the Owner of the improvements shall immediately reimburse the Association for all expenses incurred in connection with such removal.

**15.6 Criteria for Approval.** The Committee shall recommend approval and the Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that the improvements in the location indicated will not be detrimental to the appearance of the surrounding areas of the Project as a whole; that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project; and that the upkeep and maintenance of the proposed improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography, adequacy of drainage, erosion control, grade and finished ground elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Committee or Executive Board may deem appropriate.

**ARTICLE XVI**  
**RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

16.1 *Addition of Unspecified Real Estate.* Subject to those restrictions set forth in Section 222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

16.2 *Reserved Development Rights of Expansion.* Declarant reserves the right for itself and any Successor Declarant for a period of ten (10) years from the date of the recordation of this Declaration at any time and from time to time to further subdivide any Unit located in the Project or to construct on the Future Development Property Units including up to 24 additional Units, not to exceed the maximum number of Units indicated in Section 3.3 herein, to convert a previously created Unit into a Common Element and to expand the Common Elements, including the creation of additional parking spaces on the Future Development Property or other locations within the Future Development Property.

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

16.2.2 *Expansion of Definitions.* In the event of such expansion or conversion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Map plus any additional Units added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property as expanded.

16.2.3 *Declaration Operative on Expansion Property.* Units and parking spaces added or converted by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations. The

rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are converted or added to this Declaration in accordance with these provisions relating to enlargement thereof. Assessments for Units within the expansion property shall commence on the date of the recording of the Supplemental Declaration and shall be prorated as of such date.

16.2.4 *Effect of Expansion.* Upon the conversion of a Unit or inclusion of additional Units under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the Allocated Interests applicable to a Unit shall be as set forth in Article 2.1 above.

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

16.3 *Reservation of Withdrawal Rights.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw any or all of the Future Development Property or any Common Element or Unit situated thereon from the provisions of this Declaration; provided, however, that none of the Future Development Property or any Common Element or Unit situated thereon may be withdrawn after any Unit on the Future Development Property has been conveyed by Declarant to a purchaser.

16.4 *Other Reserved Rights.* Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps and on any Supplemental plats and Maps filed with Supplemental Declarations as such may be amended from time to time, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, ten (10) years from the recording of this Declaration with the Clerk and Recorder, (c) to subject the Project to a master association, (d) to make, merge or consolidate the Project with a common interest community of the same form of ownership, (e) to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant Control as set forth in Section 4.4 above, (f) construct fences throughout the Project during any time of the development and improvement of the Project, (g) dedicate any access roads and utility easements within the Project to public use or Association use, (h) develop, install and construct all improvements anticipated by and included in a land use permit issued by the Town for the full and complete development of the The Plaza at Aspen Village as anticipated, permitted and allowed, and as it may be subsequently amended thereafter, (i) enter into agreements with the Town and any other third parties



for the purpose of planning and fully developing The Plaza at Aspen Village, (j) create Common Elements and/or Limited Common Elements and to amend, with the consent of the Town, its land use approval, (k) amend this Declaration to correct typographical or inadvertent errors; (l) to subdivide the Property into one or more lots; and (m) to make parking area assignments for individual parking spaces as described in Article 3.7 herein. The Declarant, in the event of exercise of such reserved right, shall give the Executive Board notice thereof and the name of the Unit Owner to whom the Declarant has granted the exclusive use, which notice shall be conclusive upon the Executive Board and all Unit Owners as to the rights of the Unit Owner designated in such notice. Upon such notice to the Executive Board the assignment of the parking spaces or storage areas so described shall become Limited Common Elements appurtenant to the designated Unit. All spaces which are not assigned in this manner shall be available to the Declarant for its use, leasing or licensing to any other Unit Owner or third party, all in the exercise of Declarant's full discretion and without any approval by the Association, other Unit Owners or Mortgagees.

16.5 *Termination of Rights Reserved.* Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant terminate ten (10) years after the date upon which this Declaration is recorded; provided, however, such reserved rights may be: (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose; (ii) extended as allowed by law; or (iii) terminated in whole or in part by a written instrument executed by the Declarant in such manner as provided in the Act.

16.6 *Phasing of Development Rights.* No assurances are made by the Declarant as to whether the Declarant will exercise its development rights or the order in which such development rights will be developed. The exercise of development rights as to some portions of the Property will not obligate the Declarant to exercise them as to other portions.

16.7 *Deannexation.* The Declarant may deannex any portion of the Future Development Property for a period of ten (10) years from the date of recordation by the Declarant of this Declaration; provided, however, that if the Declarant is delayed in the improvement and development of the Future Development Property on account of a sewer, water or building permit moratorium or any other cause or event beyond the Declarant's control, then the aforesaid ten year period shall be extended by a period of time equal to the length of the delays or an additional five (5) years, whichever is less; provided further that (i) the Declarant is the owner of such property at the time of deannexation, or (ii) if the Declarant is not the owner of such property, the Declarant deannexes such property with the written consent of the owner thereof. Such deannexed property shall no longer be subject to the covenants and restrictions of this Declaration except for (i) easements, rights, reservations, exemptions, powers or privileges reserved to the Declarant pursuant to this Declaration which affect the deannexed property and (ii) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to the Declarant in the instrument effectuating such deannexation. Such deannexation shall be made by recording a Supplementary Declaration in the office



of the Archuleta County Clerk and Recorder, withdrawing the effect of the covenants and restrictions of this Declaration from the deannexed property. Such deannexed property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

16.8 *Amendment of Reserved Rights.* The reserved rights hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Units and other portions of the Project hereafter made, whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article XVI, even though no specific reference to such rights appears in the conveying instruments. Nothing in this Article XVI shall impair or limit any other rights granted or reserved to Declarant by other provisions of this Declaration or any Supplemental Declarations.

## ARTICLE XVII MANDATORY DISPUTE RESOLUTION

17.1 *Statement of Clarification.* Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

17.2 *Alternative Method for Resolving Disputes.* Declarant, the Association, its officers and directors, all Owners and any person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes involving the Project and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims each may have to the procedure set forth in this Article XVII and not to a court of law.

17.3 *Claims.* Except as specifically excluded in this Article 17.3, all claims, disputes and other controversies arising out of or relating to the:

17.3.1 Contract for sale and purchase between Declarant and a buyer,

17.3.2 Purchase of a Unit,

17.3.3 The interpretation, application or enforcement of this Declaration,

17.3.4 Land development, design and/or construction of the improvements within the Project and/or any alleged defect therein,

17.3.5 Rights, obligations and duties of any Bound Party under this Declaration, and/or

17.3.6 Breach thereof

all of which are hereinafter referred to as a "Claim" shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by Mandatory Binding Arbitration all in accordance with this Article XVII and not in a court of law.

17.4 *Claims Subject to Approval.* Unless Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article XVII:

17.4.1 Any suit by the Association against any Bound Party to enforce the provisions of Article XI (Assessments);

17.4.2 Any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of Article 3.5 (Use Restrictions);

17.4.3 Any suit by an Owner to challenge the actions of Declarant, the Association, the Declarant acting as the Architectural Review Committee, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Article XV (Architectural Control and Design Review);

17.4.4 Any suit between or among Owners which does not include Declarant or the Association as a party;

17.4.5 Any suit in which any indispensable party is not a Bound Party.

17.5 *Notice of Claim.* Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall submit all of their Claims by written notification delivered to each Respondent, stating plainly and concisely:

17.5.1 The nature of the Claim including the persons involved and Respondent's role in the Claim;

17.5.2 The legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

17.5.3 The specific relief and/or proposed remedies sought.

**17.6 Timely Initiation.** All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

**17.7 Right to be Heard.** Upon receipt of a Claim and prior to the Association or any Owner asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this Article XVII, Declarant shall have the right to be heard by the Claimant, affected Owners and Association in an effort to resolve the Claim.

**17.8 Right to Inspect.** If the Claim is based on land development, design and/or construction of the improvements within the Project, then, subject to Owner's prior written approval which shall not be unreasonably withheld, Declarant shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but not limited to any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by an Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

**17.8.1** Be careful to avoid any unreasonable intrusion upon, or harm, damage or cause to the other party including without limitation using its best efforts to avoid causing any damages to, or interference with any improvements on the property being inspected;

**17.8.2** Minimize any disruption or inconvenience to any person who occupies the property being inspected;

**17.8.3** Remove daily all debris caused by inspection and located on the property to be inspected;

**17.8.4** In a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the property to be inspected and repair and replace all damage and restore the inspected property to the condition of the property as of the date of inspection unless the inspected property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, parking areas, landscaping, utility lines or other improvements on the property to be inspected that were damaged, removed or destroyed by the Inspecting Party. In the event the Inspecting Party wishes to make

appropriate and necessary repairs to resolve the subject matter of the Claim, the same shall be made upon terms and conditions acceptable to all affected parties.

*The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its rights to inspect to accrue against or attach to the inspected property. The Inspecting Party shall indemnify, defend and hold harmless the owners, tenants, guests, employees and agents against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from any breach of this Article by the Inspecting Party.*

**17.9 *Good Faith Negotiations.*** The parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such party in negotiations.

**17.10 *Mediation.*** If the parties do not resolve the Claim through negotiations within thirty (30) days after the date of submission of the Claim to Respondents, as may be extended upon agreement of all affected parties, Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspice of an independent mediation service acceptable to all parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim and all Respondents shall be released and discharged from any and all liability to Claimant on account of such Claim.

**17.10.1** Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties.

**17.10.2** If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation or within such other time as determined by the mediator or agreed to by the parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the parties are at an impasse and the date that mediation was terminated.

**17.10.3** Within ten (10) days after issuance of a Termination of Mediation, the Claimant shall make a final written settlement demand to the Respondents and the Respondents shall make a final written settlement offer to the Claimant. If the Claimant fails to make a settlement demand, Claimant's original Claim shall constitute the settlement demand. If the Respondent fails to make a settlement offer, Respondent shall be deemed to have made a "zero" or "take nothing" settlement offer.

**17.10.4** Each party shall bear its own costs including attorney's fees and each party shall share equally all charges rendered by the mediators and all filing fees and costs of conducting the mediation proceeding.

**17.10.5** If the parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article XVII and any party thereafter

fails to abide by the terms of such agreement, then any other affected party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article XVII. In such event the party taking action to enforce the agreement shall be entitled to recover from the noncomplying party all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

**17.11 *Consensus for Association, Arbitration or Litigation.*** Except as provided in this Article XVII, the Association shall not commence any arbitration or judicial or administrative proceeding unless Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated agree to such proceeding.

This paragraph 17.11 shall not apply, however, to:

17.11.1 Actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens);

17.11.2 The imposition and collection of Assessments, fines, costs and attorney's fees or other specific amounts due under the Declaration; or

17.11.3 Counterclaims brought by the Association and proceedings instituted against it.

**17.12 *Arbitration.*** If the parties do not reach a settlement of the Claim within fifteen (15) days after issuance of any Termination of Mediation and reduce the same to writing, the Claimant shall have fifteen (15) additional days to submit the Claim to binding arbitration in accordance with the Arbitration Procedures contained in Exhibit B attached hereto and deliver an Arbitration Notice to all Respondents.

17.12.1 The parties agree that where any Claim, dispute or other controversy existing between them is submitted to arbitration, and any other Bound Party may have liability with respect thereto, all parties including any third parties agree that the third parties may be joined as additional parties in the arbitration, or if a separate arbitration exists or is separately initiated, to the consolidation of all arbitrations. It is the intent of the parties to resolve all rights and obligations of interested parties at one time and one forum rather than in multiple proceedings.

17.12.2 If the Claims are not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned and Respondent shall be released and discharged from any and all liability to Claimant arising out of such claims.

17.12.3 The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereof and execution may issue. The parties

seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award.

17.12.4 The arbitrator shall have authority, and the sound discretion, to award the prevailing party such party's costs and expenses, including attorney's fees.

17.12.5 The Association or an Owner shall notify the Declarant prior to retaining any person or entity as an expert witness for purposes of any arbitration or authorized litigation.

17.13 *Binding Affect.* This Article XVII and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

17.14 *Amendment.* This Article XVII shall not be amended unless such amendment is approved by Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated.

## ARTICLE XVIII MORTGAGEE'S RIGHTS

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

18.1 *Title Taken by Mortgagee.* Any Mortgagee holding a First Mortgage 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 is acquired.

18.2 *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 Mortgagee who is a beneficiary of a First Mortgage against the Unit.

18.3 *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Units may, jointly or singularly, 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 hazard insurance policies, or secure new hazard insurance coverage

on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

18.4 *Audited Financial Statement.* Upon written request from any Mortgagee, which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

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

18.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 19.2 below;

18.5.2 Any proposed termination of the common interest community;

18.5.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by that Mortgagee;

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

18.5.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article X.

18.6 *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees, then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

## **ARTICLE XIX DURATION OF COVENANTS AND AMENDMENT**

19.1 *Term.* This Declaration and the common interests of the Owners in the Common Elements, may be terminated only if at least sixty-seven percent (67%) of the

votes allocated in the Association and fifty-one percent (51%) of the First Mortgagees agree to such termination by an executed, acknowledged instrument duly recorded in the real estate records of Archuleta County, Colorado. This Declaration shall also terminate in the event of a taking of all of The Plaza at Aspen Village by condemnation, eminent domain or termination as otherwise provided in Section 218 of the Act. Upon termination of this Declaration, all property owned by the Association shall be disposed of, with the proceeds generated being disbursed, as provided in Section 218 of the Act.

**19.2 Amendment.** Except as otherwise provided herein, this Declaration, or any provision of it, may be amended at any time by approval of Owners holding not less than sixty-seven percent (67%) of the votes allocated in the Association. If approval of the First Mortgagees is required, such approval shall first be obtained from fifty-one percent (51%) of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by votes allocated to such Units). A First Mortgagee shall be entitled to notice and the right to approve amendments, in accordance with Section 19.1 above if the amendment to the Association Documents add any material provisions which establish, provide for, govern or regulate any of the following: increases in annual assessments greater than fifteen percent (15%) of the Annual Assessments assessed in the previous year, assessment liens or subordination of such liens, except for increases in utilities, taxes and insurance measured by votes allocated to such Units if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

19.2.1 Voting;

19.2.2 Increases in Annual Assessments greater than fifteen percent (15%) of the Annual Assessment assessed in the previous year, Assessment liens or subordination of such liens, except for increases in utilities, taxes and insurance;

19.2.3 Reduction in reserves for maintenance or repair and replacement of the Common Elements;

19.2.4 Hazardous insurance or fidelity bond requirements;

19.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements except as reserved by Declarant;

19.2.6 Responsibility for maintenance and repair of the Project;

19.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community except as reserved by Declarant;

19.2.8 Change in the boundaries of any Unit except as reserved by Declarant;



19.2.9 The interests in the Common Elements except as reserved by Declarant;

19.2.10 Convertibility of Units into Common Elements or of Common Elements into Units except as reserved by Declarant;

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

19.2.12 Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material; and

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

19.3 *Amendment for Certain Actions.* Notwithstanding anything else contained in this Declaration, except in cases where amendments may be executed by the Declarant under the Act and this Declaration, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least two-thirds (2/3) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) and two-thirds (2/3) of all Owners (other than Declarant) of the Units have given their prior written approval, the Association may not:

19.3.1 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 Percentage Share of Ownership of Common Elements other than as set forth in Article XVI;

19.3.2 Partition or subdivide any Unit;

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

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

19.4 *Recordation of Amendment.* Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act.

**ARTICLE XX  
LIMIT ON TIMESHARING**

No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

**ARTICLE XXI  
GENERAL PROVISIONS**

**21.1 *Restriction on Declarant Powers.*** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

**21.2 *Enforcement.*** Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**21.3 *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.

**21.4 *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.

**21.5 *Number and Gender.*** Unless the context shall otherwise provide, a singular number shall include the plural, a plural number shall include the singular and the use of any gender shall include all genders.

**21.6 *No Dedication.*** Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of The Plaza at Aspen Village to the public or for any public use.

**21.7 *Applicable Law, Jurisdiction and Venue.*** The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Colorado. Subject to the provisions of Article XVII above, all parties to this Declaration, or those parties who will benefit by this Declaration, hereby consent to venue for any action commenced with respect to this

Declaration being in the District Court in and for the County of Archuleta, State of Colorado.

21.8 *Run With the Land.* Declarant, for itself, its successors and assigns, hereby declare that all of the Property shall be held, used and occupied subject to the provisions of this Declaration and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become an Owner of any interest in The Plaza at Aspen Village.

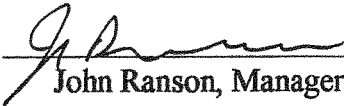
21.9 *CCIOA Provisions.* In the event of any conflict between the provisions of the Act and the provisions of the Map, this Declaration or the Articles of Incorporation or the Bylaws, the provisions of CCIOA shall control.

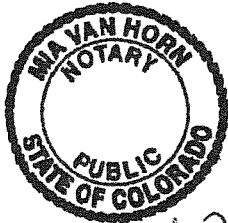
21.10 *Binding Effect.* Declarant, Owners, Mortgagees, permitted guests, invitees and their heirs, personal legal representatives, successors and assigns or any other person using or occupying the Project shall be bound by, shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions and all rules, regulations and agreements lawfully made by the Association.

21.11 *Consent of Trust Deed Beneficiaries.* By its signature below, the beneficiary of the existing deeds of trust encumbering the Property, hereby consent and subordinate its interests to this Declaration.

DECLARANT:

ASPEN PARTNERS PAGOSA, LLC  
A Colorado limited liability company

By:   
John Ranson, Manager




My Commission Expires 1-29-2011

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARCHULETA        )

The foregoing instrument was acknowledged before me this 18 day of October 2007, ~~2006~~, by John Ranson, as Manager of Aspen Partners Pagosa, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 1-29-2011



**EXHIBIT A**

**ALLOCATED INTERESTS**

<b>UNIT #</b>	<b>SQUARE FOOTAGE</b>	<b>% INTEREST</b>	<b>NUMBER OF VOTES</b>
A-1	5,445.9	48.5	48.5
A-2	1,642.3	14.63	14.63
A-3	1,775.6	15.81	15.81
A-4	606.8	5.4	5.4
A-5	685.4	6.1	6.1
A-6	1,072.7	9.56	9.56
<b>TOTAL</b>	<b>11,228.7</b>	<b>100</b>	<b>100</b>

**EXHIBIT B TO  
DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE PLAZA  
AT ASPEN VILLAGE**

**ARBITRATION PROCEDURES**

1. All Claims subject to arbitration shall be decided by a single private party arbitrator to be appointed by the parties.
2. If the parties are unable to agree upon an arbitrator within thirty (30) days from the date of the Arbitration Notice, the presiding judge of the District Court in Archuleta County shall appoint a qualified arbitrator upon application of the party.
3. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Arbitrator Disclosure"). If any party objects to the service of any arbitrator within fourteen (14) days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.
4. The arbitrator shall fix a date, time and place for the hearing. The arbitration proceedings shall be conducted in Archuleta unless otherwise agreed by the parties.
5. Except as modified herein, the arbitration shall be conducted pursuant to the then current Construction Industry Rules of Arbitration of the American Arbitration Association to the extent applicable, but shall not be conducted or administered by the American Arbitration Association.
6. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the parties.
7. Unless directed by the arbitrator, there will be no post hearing brief.
8. The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefor and the relief granted and be rendered promptly after the close of the hearing and no later than fourteen (14) days from the close of the hearing, unless otherwise agreed by the parties. The award shall be in writing and signed by the arbitrator.

9. The arbitrator shall have authority, in the soundest exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees.