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DECLARATION
OF
CONDOMINIUM

EAST COLFAX FLATS

1530 Krameria Street, Denver CO

October __, 2006

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**DECLARATION OF CONDOMINIUM
FOR
EAST COLFAX FLATS**

THIS DECLARATION OF CONDOMINIUM for the EAST COLFAX FLATS condominiums, ("Declaration") is made as of this ____ day of October, 2006, by KRAMERIA 1530, LLC, a Colorado limited liability company ("Declarant").

RECITALS

- A. Declarant is the owner of that certain real property located in the City and County of Denver, Colorado, more particularly described on the attached **Exhibit "A"** (the "Property").
- B. Declarant desires to create a condominium common interest community, pursuant to the Colorado Common Interest Ownership Act as set forth in the Colorado Revised Statutes § 38-33.3-101 et seq. (the "Act"), on the Property, the name of which is EAST COLFAX FLATS.
- C. The development plan for the Project calls for up to thirteen (13) Units in a single phase, to be completed in 2006.
- D. The project building was constructed over fifty-five years ago in 1948 by parties unknown and unaffiliated with the Declarant, and converted to condominiums by the Declarant in 2006. Much of the original structural, mechanical, roofing, electrical, plumbing and heating systems remain intact and in place, unaltered and unseen by the Declarant, and Owners understand Units were converted, and remain, subject to possible latent defects and expressly assume that risk. ALL CURRENT AND FUTURE OWNERS ARE ENCOURAGED TO ENGAGE IN A COMPLETE INSPECTION OF THEIR UNIT, conducted by professionals of their choice, including a mold or environmental inspection prior to closing. **DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED**, including, but not limited to those of workmanlike construction; habitability; future association costs and assessments; design; sound transmission; quality; condition or otherwise as to the property or units and other improvements constructed thereon or other adverse conditions which may exist, and Declarant expressly disclaims any such express or implied representations or warranties with respect to current and future owners. Moreover, Owners assume the risk associated with using, misusing or overloading common elements such as balconies, decks and amenities, as well as the obligation to engage professionals to periodically inspect and maintain same.

**ARTICLE I
DECLARATION & SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the current year's taxes, due but not yet payable, and those easements, licenses, rights of way, restrictions, reservations, encumbrances and covenants known or of record as set forth on **Exhibit "C"** hereto, as well as the following covenants, obligations, 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 hereby submits the Property to the provisions of the Act, to create a condominium.

**ARTICLE II
DEFINITIONS**

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

- 2.1 “Agency” means any agency or corporation such as the U.S. Department of Housing and Urban Development (“HUD”), U.S. Veteran’s Administration (“VA”), Federal National Mortgage Association (“FNMA”) or Federal Home Loan Mortgage Corporation (“FHLMC”) that purchases or insures residential mortgages, or any other public, quasi-public or private entity which performs (or may perform) functions similar to those currently performed by any of such entities.
- 2.2 “Allocated Interests” means the undivided interest in the Common Elements, Common Expenses and votes in the Association allocated to each unit. The formulas for the Allocated Interests for each Unit are as follows:
- 2.2.1 Shares of the Common Expenses and shares of ownership of Common Elements appurtenant to a particular Unit shall be on the basis of the proportion of the total square footage of the floor area of similarly sized Units compared to the total square footage of the floor area in all the Units, collectively, as approximated by a surveyor and as shown on the attached Exhibit “B”. Notwithstanding such allocation, certain Common Expenses may be apportioned to particular Units under any provision of this Declaration or any Association Document.
- 2.2.2 Voting: One vote per Unit, regardless of square footage.
- 2.3 “Articles” means the Articles of Incorporation for EAST COLFAX FLATS OWNERS ASSOCIATION, INC., 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 “Annual Assessment” or “Assessments” mean the Annual, Special and Default Assessments levied pursuant to Article XI below. Assessments are also referred to as a Common Expense Liability as defined under the Act.
- 2.5 “Association” means EAST COLFAX FLATS OWNERS ASSOCIATION, INC, a Colorado Nonprofit Corporation, and its successors and assigns.
- 2.6 “Association Documents” means this Declaration, the Articles, the Bylaws, the Map, any Design Guidelines (as defined in Article XVI), and any budget, procedures, rules, regulations, protocols or policies adopted under such documents by the Association including without limitation guidelines for architectural review, Alternate Dispute Resolution, Responsible Governance and education of the Board and/or Owners.
- 2.7 “Building” means the building constructed on the Property that contains the Units.
- 2.8 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.
- 2.9 “Ceiling” means the interior surface of the ceiling of a Unit.
- 2.10 “Clerk and Recorder” means the office of the Clerk and Recorder of the City and County of Denver, Colorado.
- 2.11 “Common Elements” means all portions of the Project except the Units. The Common Elements are owned in common by the Owners in undivided interests according to the Allocated Interests set forth in Section 2.2 above, and consist of General Common Elements and Limited Common Elements.

- 2.11.1 “General Common Elements” means all tangible physical properties of the Project except the Limited Common Elements and the Units. General Common Elements may also alternatively be referenced in this Declaration and on the Map by the initials “GCE” or “CE”.
- 2.11.2 “Limited Common Elements” means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map, in a recorded certificate executed by the Declarant pursuant to Article XV, or by authorized 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. Limited Common Elements may also alternatively be referenced in this Declaration and on the Map by the initials “LCE”.
- Without limiting the foregoing, the Limited Common Elements shall include any deck, balcony, patio, yard, attic, fireplace flue and Parking Space appurtenant or adjacent to any Unit, and is intended for its exclusive use, as well as the utility, heating or air conditioning and domestic hot water equipment contained within or providing exclusive service to any such Unit, which Limited Common Elements shall be used in connection with the applicable Unit to the exclusion of the use thereof by the other Owners, except by invitation.
- No reference thereto need be made in any instrument of conveyance, encumbrance or any other instrument in order to convey or encumber the Limited Common Elements appurtenant to a Unit.
- The Limited Common Element Parking Spaces are further described, provided for and allocated in Article III herein, and/or specific exhibits and/or amendments hereto.
- 2.12 “Common Expenses” means: (i) all expenses expressly declared to be common expenses by this Declaration or other Association Document; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article X; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.
- 2.13 “County” means the City and County of Denver, Colorado.
- 2.14 “Declarant” means KRAMERIA 1530, LLC a Colorado limited liability company and any of their successors or assigns who have received an assignment of the Declarant’s rights pursuant to the Act. Owners understand and agree that conversion of this project was undertaken by the Declarant and, despite the fact they may have met or dealt with individuals representing that entity as manger, member, owner or agent, Owners and Purchasers agree to hold harmless and release those individuals and look solely to the Declarant entity with respect to any actual or alleged demand, liability or claim pertaining to all facets of the development of the Project and management of the Association while under Declarant control. In the event this provision is violated, the non-breaching party shall be entitled to and awarded its attorney fees and legal costs.
- 2.15 “Declaration” means this Declaration and the Map, and amendments and supplements thereto, as further provided in Article XVIII herein.
- 2.16 “Development Right” and “Special Declarant Rights” mean the right to add real estate to the Project; create, subdivide or convert Units, Common Elements or Limited Common Elements within the Project; or withdraw real estate from the Project, as further defined by Section 103 of the Act and Article XV herein.
- 2.17 “Exterior Walls” means the walls bounding a Unit on all sides.

- 2.18 “Executive Board” or “Board of Directors” or “Board” mean the governing body of the Association.
- 2.19 “First Mortgage” means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- 2.20 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage.
- 2.21 “Manager” means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, to the extent the Executive Board may authorize from time to time.
- 2.22 “Map” means the condominium map of the Project prepared in accordance with the Act and 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, as further provided in Article XVIII.
- 2.23 “Member” means every person or entity that holds membership in the Association by virtue of ownership of a Unit.
- 2.24 “Mortgage” means any mortgage, deed of trust or other document conveying any Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.
- 2.25 “Mortgagee” means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of such person under such Mortgage.
- 2.26 “Owner” means the owner of record, whether one or more persons, of fee simple title to any Unit. “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest therein.
- 2.27 “Owner’s Agent” means members of the Owner’s family, or the Owner’s agent, employee, invitee, licensee or tenant.
- 2.28 “Parking Space” one of the Parking Spaces as shown on the Map and as further described and allocated by this Declaration. Not every Unit may be allocated a Limited Common Element Parking Space under this Declaration. Parking Spaces shall generally be Limited Common Elements and the boundaries are shown on the Map, and on the physical space by painted lines. In the event of a discrepancy between the Map and the physical location of the painted lines, the Map shall control. The Parking Spaces are located within the “Parking Lot”, which lot itself shall be a General Common Element unless fewer than all units are allocated a Parking space, in which event it shall be a Limited Common Element allocated to those Owners who are allocated a Parking Space.
- 2.29 “Person(s)” means a natural person or any legal association of persons including, but not limited to, partnerships, limited partnerships, corporations, limited liability companies or associations recognized under Colorado Law.
- 2.30 “Project” means the condominium common interest community created by this Declaration and as shown as the Map consisting of the Property, the Units, and the Common Elements.
- 2.31 “Successor Declarant” means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

- 2.32 “Supplemental Declaration” means an instrument that amends this Declaration in accordance with the amendment provisions of Article XVIII herein or under the Act if not otherwise provided herein.
- 2.33 “Supplemental Map” means a supplemental map of the Project that depicts any change in the Project through a Supplemental Declaration, or which otherwise corrects or amends the Map in accordance with the Act or Article XVIII herein.
- 2.34 “Unit” means, with respect to enclosed units intended for dwelling, one individual airspace unit as bounded by the unfinished interior surface of the Exterior Walls, as further defined herein. The lower boundary for each Unit is the unfinished interior surface of the floor, extending to the inside of the unfinished Exterior Walls of the Unit. The upper Unit boundary for each Unit is the unfinished interior surface of the Ceiling of the Unit. Each Unit includes the airspace contained within the unfinished interior of the Exterior Walls, windows, doors and fireplaces, if any, all as shown on the Map. The Units are further described in Article III hereof.

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

ARTICLE III
NAME; UNIT DIVISION, COMMON ELEMENTS, CONVEYANCE, ALLOCATION, DESCRIPTION & RESTRICTIONS

- 3.1 Name. The name of the Project is EAST COLFAX FLATS condominiums. The Project is condominium pursuant to the Act.
- 3.2 Association. The name of the Association EAST COLFAX FLATS OWNERS ASSOCIATION, INC., a Colorado Nonprofit Corporation. 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. Subject to Declarant’s reserved rights under Article XV, the Project shall consist of a maximum of thirteen (13) Units. Each Unit shall consist of the fee simple ownership interest in the Unit as defined in this Declaration and an undivided fee simple ownership interest in the Common Elements in accordance with **Exhibit “B”** hereto and as further defined in this Declaration.
- 3.4 Identification of Units. The identification number and/or street address of each Unit is shown on the Map.
- 3.5 Description of Units & Limited Common Elements; Inseparability; Transfer.

3.5.1 Description. The provisions of Section 202 of the Act, entitled “Unit Boundaries” are applicable to the Project. The Unit Boundaries are generally shown on the Map, and are generally enclosed and bounded by the unfinished interior of the Exterior Walls, as further defined herein, as follows:

- (a) All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finished flooring and any other materials constituting any part of the finished interior surfaces of the bounding Exterior Walls, floors and ceilings are a part of the Unit, and all other portions of the bounding Exterior Walls, floors or ceilings are a part of the General Common Elements.
- (b) If any chute, utility facility, flue, duct, wire, conduit, bearing wall, bearing column or other fixture which lies partially within and partially outside the designated

boundaries of a Unit, or which otherwise serves or benefits more than one Unit, then any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements.

(c) Subject to the provisions of paragraph 3.5.1 (b) above, all spaces, interior partitions, non-bearing walls, other fixtures and improvements within the Exterior Walls of a Unit are a part of that Unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the defined boundaries thereto, are Limited Common Elements allocated exclusively to that Unit.

(e) With respect to any non bearing interior walls, partitions, windows, posts or doors which separate two or more Limited Common Elements, but do not separate any Limited Common Element(s) from any General Common Element(s) or Unit(s), said partition, wall, window, door or post shall be a Limited Common Element allocated to the Owners of those Units which are allocated said adjoining Limited Common Elements.

(f) With respect to any other walls, partitions or posts that separate any Limited Common Element(s) from any General Common Element(s) or Unit(s), said wall, partition or post shall be a General Common Element.

(g) The lower boundary for each Unit is the interior surface of the unfinished floor of the lowest level of the Unit. The upper Unit boundary for each Unit is the interior surface of the Ceiling of the uppermost level of each Unit.

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

3.5.3 Transfer of Unit. Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it as follows:

Condominium Unit No. ____, EAST COLFAX FLATS, City and County of Denver, State of Colorado, according to the Condominium Map thereof recorded on ____, at Reception No. ____, and the Declaration recorded on ____, at Reception No. ____, in the records of the Clerk and Recorder of the City and County of Denver, Colorado, as may be amended from time to time.

3.5.4 Transfer and Allocation of Limited Common Elements. All Parking Spaces shall be Limited Common Elements, as further defined in this Declaration and depicted and defined on the Map, and, in the case of Limited Common Elements, allocated to the exclusive use and occupancy of the Owners of particular Units herein. Any Common Element Parking Space not allocated to the exclusive use and occupancy of the Owner(s) of a particular Unit shall be General Common Element, notwithstanding any further designation thereof on the Map. Other specific Limited Common Elements.

(a) **Parking Spaces.** The exact number of Parking Spaces shall be as set forth and depicted on the Map and shall be available on a first come, first served basis to those first purchasers of Units from the Declarant. If a particular Unit is to be allocated the

exclusive right to use and occupy a particular Parking Space as a Limited Common Element, then at the time of closing on the sale of a particular Unit the Declarant shall assign that Unit the right to the exclusive use and occupancy of that corresponding Parking Space, and that space shall thereafter be permanently appurtenant to that Unit unless reallocated as provided below.

(b) **General Provisions.** Upon the sale of Units, the right to use Limited Common Element Parking Spaces may be reflected by the inclusion of a statement in a deed, bill of sale or other conveyance instrument stating: “**together with the exclusive right to use and occupy LCE Parking Space** _____” Thereafter, a list of those Parking Spaces assigned as Limited Common Elements shall be set forth on an AMENDMENT to this Declaration to be signed by the Declarant and recorded prior to the conveyance of the Declarant’s last Unit stating to which Unit said spaces have been assigned. The failure of Declarant to include the verbiage assigning a Parking Space to a good faith purchaser for consideration, as provided above, shall not defeat, alter or impair the rights of the Owner to whom said LCE is assigned per Amendment hereto. Similarly, the failure to timely prepare or record such an amendment shall not defeat or impair the rights of those Owners who acquired the right to use and occupy that Parking Space from the Declarant for consideration. Should any Parking Space actually remain unsold and unassigned after the Declarant transfers control of the Association, the Association itself shall be entitled to utilize same as a General Common Element, or sell the rights to same as a Limited Common Element for consideration or otherwise.

3.5.5 Reallocation of Limited Common Elements. Pursuant to Section 208 of the Act: a Limited Common Element may be reallocated between or among units after compliance the following procedure to amend this Declaration. In order to reallocate Limited Common Elements between or among units, the Unit Owners of those Units, as the applicants, must submit an application for approval of the proposed reallocation to the Executive Board, which application shall be executed by those Unit Owners and shall include: (a) The proposed form for an amendment to the Declaration as may be necessary to show the reallocation of Limited Common Elements between or among Units; (b) A deposit against attorney fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Executive Board; and (c) Such other information as may be reasonably requested by the Executive Board. No reallocation shall be effective without the approval of the Executive Board. The reallocation shall be effectuated by an amendment signed by the Association and by those Unit Owners between or among whose Units the reallocation is made, which amendment shall be recorded as provided in section 38-33.3-217 (3) All costs and attorney fees incurred by the association as a result of the application shall be the sole obligation of the applicants.

3.5.6 Conversion of Limited Common Elements. The conversion of Common Elements and/or Units requires amending this Declaration as further set forth in Article XVIII herein below.

ARTICLE IV USE RESTRICTIONS

4.1 Home Office. Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied primarily as a residence. Nothing in this Declaration is intended to prevent the lawful use of any Unit as the home office for a business entity owned by or affiliated with a Unit Owner, or occupant. Any business activity conducted within a Unit shall be undertaken in such a manner to ensure the activity does not interfere with other Owners’ quiet use and enjoyment of the Project premises. The Association may establish and enforce any reasonable rules and regulations relating to the conduct of business activities on the Project premises, including the Units.

- 4.2 Leasing. Subject to the provisions of Section 5.10, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) no leases shall be made for less than a six month term; (ii) all leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration and the Bylaws; (iii) a Unit may be leased only for the uses provided herein above, and (iv) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not there is a lease or the lease contains such a provision. The Association may also require the use of its own lease form.
- 4.3 Pets. No household pet or animal shall be allowed in or about the Project, including Common Elements, at any time without close supervision by an Owner. Owners shall be responsible for strict compliance with all laws and any Rules and Regulations adopted from time to time by the Association related to pet ownership, including any regulation wholly excluding or limiting the number or type of pets allowed, and shall ensure their pet does not interfere with other Owners' quiet use and enjoyment of the Project premises. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive noises created by their pets. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by -and any costs incurred by the Association as a result of- such pet(s). Any such amounts shall be and constitute a Default Assessment enforceable by the Association as per this Declaration.
- 4.4 Structures. Except as hereinafter provided and except as reserved by Declarant hereunder or as approved by the Executive Board, no structure of a temporary character, including but not limited to a house trailer, tent, shack, storage shed, enclosure or outbuilding, shall be placed or erected upon or within any Unit or within any patio, balcony or deck area or within the Common Elements; no residence shall be occupied in any manner at any time prior to being fully completed; nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions set forth herein. However, during the actual construction, alteration, repair or remodeling of a residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work, subject to the prior written approval of the Executive Board as to the storage situs and method. The work of constructing, altering or remodeling any residence shall be prosecuted diligently from the commencement thereof until completion. Additional restrictions are imposed in Section 9.1 and Article XVI herein.
- 4.5 Nuisances. Any use, act or omission which is the source of or unreasonably interferes with another Owners quiet use and enjoyment of its Unit or the Project shall be a nuisance. All valid federal, state and local laws having jurisdiction shall be observed and may be enforced by the Association as if same were contained in the Governing Documents. However, IN NO EVENT SHALL THE ACTS OR OMISSIONS OF THE DECLARANT or approved builder which are reasonably necessary to complete the Project or exercise rights reserved hereunder be deemed or constitute a nuisance unless they qualify as outrageous conduct.
- 4.6 Miscellaneous Use Restrictions; Rules and Regulations
- 4.6.1 Except for rights reserved by the Declarant hereunder, address designations and single, non-illuminated "For Sale" or "For Rent" signs per Unit, no sign or banner bearing commercial or any other connotation, may be placed or located within any common element, Unit or window in the premises, or otherwise visible from any public or private street, alley, sidewalk, building or property, without first obtaining the written consent of the Executive Board. The Executive Board has the further right to limit the size and other characteristics of any approved sign. Nevertheless, the regulation of the placement or display of American Flags, Service Flags and Political Signs shall be subject to and governed by C.R.S. 38-33.3-

106.5 and the Federal Flag Code, as may be amended from time to time; and the Board shall be free to adopt any rule or regulation regarding the placement so long as consistent with that section.

4.6.2 Absent Executive Board approval, no clotheslines, drying yards, service yards, woodpiles or storage areas shall be so located on any Unit or the Common Elements, as to be visible from a street, from any other Unit, or from the Common Elements;

4.6.3 Absent Executive Board approval, all types of refrigerating, cooling or heating apparatus shall be concealed within the Unit or Limited Common Elements and in no event may such an apparatus be placed upon the General Common Elements;

4.6.4 Absent Executive Board approval, no wind generators of any kind shall be constructed, installed, erected or maintained on the Project;

4.6.5 No food related products shall be placed or left on the Common Elements for an extended time or in any manner which might attract rodents or animals.

4.6.6 Except to the extent this provision contravenes applicable state or federal Law (in which case this provisions shall be amended to be consistent therewith), no satellite dishes or exterior aerials or antennas of any kind may be placed upon the exterior of the Building or upon any part of a Unit or Common Element, as to be visible from a street, from any other Unit, or from the Common Elements without the prior written approval of the Executive Board, which may impose conditions, including but not limited to size, or height limitations and screening requirements, as it deems appropriate, regarding any approval.

4.6.7 Absent Executive Board approval, any outdoor umbrella and furniture which is visible from a street, from any other Unit, or from the Common Elements, is to be of neutral color, without commercial connotation, and without writing.

4.6.8 No Owner or other party may misuse any recreational facility or balcony, nor may they stray from the designated boundaries contained within the railings of the Roof Deck or violate City load requirements.

4.6.9 Absent Executive Board approval, Owners shall place and keep area rugs on seventy percent (70%) of the hardwood floor area in their Unit.

4.6.10 Absent Executive Board approval, no abandoned or inoperable passenger cars or other vehicles of any kind shall be stored or parked on the Project. An "abandoned or inoperable vehicle" shall be defined as any passenger car, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle or other similar vehicle, which, for a period of two (2) days or longer, does not have an operable propulsion system installed therein, has flat tires or has any other condition preventing the regular and normal operation and movement of the vehicle.

4.6.11 The Executive Board is further authorized to adopt formal **Rules and Regulations** and policies, binding upon all Owners, setting forth restrictions on all matters its best discretion, including but not limited to those matters anticipated above and: (1) the parking and storage of vehicles (including bicycles), and the types of vehicles (other than standard passenger cars and SUV's and those qualifying emergency service vehicles utilized by a Unit Owner or occupant as specified in C.R.S. 38-33.3-106.5), permitted on the Common Elements and when they are so permitted; (2) storage of specific materials within the Project; (3) use of barbecues about the Project, which must in any event, be in compliance with Denver law regarding same; (4) the performance of specific activities or work within Common Elements; (5) the placement or location of any object in the Common Elements which is to be visible

from a street, from any other Unit, or from the Common Elements; (6) smoking in the General Common Elements; and (7) permissible levels of noise emanating from anywhere in the Project at any time. New Rules and Regulations adopted by the Board as provided under the Governing Documents shall have the SAME EFFECT AS IF THEY ARE A PART OF THIS DECLARATION. In the event of conflict between any other Governing Document and the Rules and Regulations, the other Governing Document shall prevail BUT ONLY TO THE EXTENT the rule attempts to invalidate the express language of that Governing Document.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

- 5.1 The Association. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit
- 5.2 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 Owners may transfer ownership of their Units free from any such right.
- 5.3 Membership and Voting. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents. Notwithstanding the number of Owners of record for any particular Unit, each Unit is entitled to one vote. Votes cannot be fractionally divided.
- 5.4 Declarant Control. Declarant shall be entitled to appoint and remove the Members of the Association's Executive Board and officers of the Association during the term of Declarant control. "Declarant Control" begins with the appointment of the initial Executive Board. The period of Declarant Control of the Association shall terminate upon the first to occur of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the total number of Units in the Project to Owners other than Declarant; (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's Control, but in that event, Declarant may require, for the duration of the period of Declarant's Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Notwithstanding the period of Declarant Control, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the total number of Units in the Project to Owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board may be elected by Owners other than Declarant; and not later than sixty (60) days after conveyance of fifty percent (50%) of the total number of Units in the Project to Owners other than Declarant, not less than thirty-three and one-third percent (33.33%) of the Members of the Executive Board may be elected by Owners other than the Declarant. Not later than the termination of the period of the Declarant's Control as provided above, the Owners, (including the Declarant) shall elect an Executive Board of at least four (4) members, as further specified in the Bylaws, at least a majority of whom must be Owners other than a Declarant or designated representatives of Owners other than Declarant and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election. Within sixty (60) days after the Owners other than the Declarant elect a majority of the Executive Board, Declarant

shall deliver to the Association all property of the Owners and the Association held or controlled by the Declarant, including without limitation those items specified in Section 303(9) of the Act.

5.5

Books and Records. The Association shall maintain such books and records as may be required under Section 317 to the Act, sufficiently detailed to enable compliance with Section 11.10 to this Declaration. As further provided hereon, the Association shall make available to Owners and to Mortgagees for inspection, upon request, during normal business hours or other reasonable circumstances, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials not to exceed its actual cost. In addition:

5.5.1 Annual Disclosures. Within ninety (90) days after assuming control from the Declarant pursuant to the Act, the Association shall make the following information available to Unit Owners upon reasonable notice in accordance with subsection (c) below. In addition, if the Association's designated agent or management company changes, the Association shall make updated information available within ninety (90) days after the change: the name of the Association; the name of the Association's designated agent or management company, if any; a valid physical address and telephone number for both the Association and the designated agent or management company, if any; the name of the common interest community; the initial date of recording of the Declaration, and the reception number or book and page for the main document that constitutes the Declaration.

5.5.2 Post-Transfer, Fiscal Year-End Disclosures. Within ninety (90) days after assuming control from the Declarant pursuant to the Act and Section 5.4 above, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Unit Owners upon reasonable advance notice:

- (a) the date on which its fiscal year commences;
- (b) its operating budget for the current fiscal year;
- (c) a list, by unit type, of the Association's current assessments, including both regular and special assessments;
- (d) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- (e) the results of its most recent available financial audit or review;
- (f) a list of all Association insurance policies, including, but not limited to, property, general liability, association director and officer professional liability, and fidelity policies, if any. Such list shall include the company names, policy limits, policy deductibles, additional named insureds, and expiration dates of the policies listed.
- (g) all the Association's Bylaws, Articles, and Rules and Regulations, if any;
- (h) the minutes of the Executive Board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- (i) the Association's responsible governance policies adopted under section 38-33.3-209.5 of the Act and Section 5.11 hereto

(j) any other items required under C.R.S. 38-33.3-209.4 as may be amended from time to time.

5.5.3 Form of Disclosure. The Disclosure required in Sections 5.5.1 and 5.5.2 above shall be accomplished by one of the following means: posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; 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 liability.

5.5.4 At the discretion of the Board or upon request of at least one-third of the Units represented by the Association the books and records of the Association shall be subject to a **REVIEW** using statements on standards for accounting and review services, by an independent, qualified person selected by the Board. Such person need not be a certified public accountant except in the case of an audit, but the person selected to conduct a review shall nevertheless have at least a basic understanding of the principals of accounting as a result of prior business experience, education above the high school level or a bona fide home study. An **AUDIT** using generally accepted accounting standards, as compared to a review, of the books, records and financial statements of the Association shall only be required upon the discretion of the Board or under those circumstances enumerated under C.R.S. 38-33.3-303, as may be amended from time to time. The audit or review shall cover the Association's financial statements, which shall be prepared using generally accepted accounting principals or the cash or tax basis of accounting.

5.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, duties or functions of the Association. The Manager shall not have the authority to make expenditures except as directed by the Executive Board. Any managing agent, employee, independent contractor, or other person acting on behalf of the Association shall be subject to the Act and the Association Documents to the same extent as the Association itself would be. The Association's contract with a managing agent shall be terminable for cause without penalty to the Association. Any such contract shall be subject to renegotiation.

5.7 Rights of Action; Alternate Dispute Resolution; Attorney Fees.

5.7.1 Right of Action. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with the decisions of the Executive Board made pursuant to the authority granted to the Association in the Association Documents. The Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to the authority granted to the Association in the Association Documents. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

5.7.2 Alternate Dispute Resolution. In any action covered by this Section, the Association or any Owner shall have the right but not the obligation to enforce Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration ("Alternate Dispute Resolution") if the parties so agree or the policy or established protocol of the Association first requires an attempt to resolve disputes via means of alternate dispute resolution before litigation is commenced (note, any such protocols thereafter shall be an Association Document). If any controversy between the Association and a Unit Owner arising in any manner out of the Association Documents, Project, or the operations or the actions of the Association or Board, is properly submitted to mediation by either party to the controversy prior to the

commencement of any legal proceeding. The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice. If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

5.7.3 Attorney Fees. The prevailing party in any arbitration or civil action shall be entitled to reimbursement from the non-prevailing party or parties for all reasonable collection costs and expenses, including attorney fees, in connection with such alternate dispute resolution or judicial relief. Even if the matter is resolved without legal proceeding or alternate dispute resolution, the Association, any Unit Owner, or any class of Unit Owners adversely affected by the failure to comply shall be entitled to and may seek reimbursement for collection costs and reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding or means of alternate dispute resolution. However, in connection with any claim in which a Unit Owner is alleged to have violated a provision of the Act or any Association Document and in which the court finds that the Unit Owner prevailed because the Unit Owner did not commit the alleged violation: (I) the court shall award the unit owner reasonable attorney fees and costs incurred in asserting or defending the claim; and (II) the court shall not award costs or attorney fees to the Association. In addition, the Association shall be precluded from allocating to the Unit Owner's account with the Association any of the Association's costs or attorney fees incurred in asserting or defending the claim. In any event, a Unit Owner shall not be deemed to have confessed judgment to attorney fees or collection costs.

5.8 Implied Rights & Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

5.9 Notice. Any notice to any 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; by private delivery service or; on 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.

5.10 Owner Use and Occupancy Regulation. The Association shall have and may exercise the right to control Owner's use and occupancy of their respective Units in order to assure Owners of the eligibility of the Project for any Agency. In this regard, the Association may adopt rules and regulations with respect to rental of Units to non-Owners. Any Owner wishing to lease a Unit shall be subject to the percentage occupancy requirement of the applicable Agency and **must first apply for authorization from the Association for any non-Owner residential use that may impact any Project eligibility** or for any other reason adopted by resolution of the Association. Allowance of an Owner to rent a Unit shall be on a first-come, first-served basis and the Association shall have the authority to permit or deny the use or leasing of any Unit within the Project, subject to then current Federal mortgage eligibility requirements if applicable.

5.11 Responsible Governance Policies; Board & Owner Education. To the extent any of the following governance or education policies are not adequately addressed herein or in the Bylaws or Articles, the Association shall be entitled to adopt these provisions in an existing Association Document or in a separate instrument which shall thereafter become an Association Document. Per the Act, to promote responsible governance, the Association shall:

(a) maintain accurate and complete accounting records using generally accepted accounting principles; and

- (b) adopt “Responsible Governance Policies”, being procedures, and rules and regulations available to Owners upon request concerning: (I) collection of unpaid assessments; (II) handling of conflicts of interest involving Board members; (III) conduct of meetings, which may refer to applicable provisions of the nonprofit code or other recognized rules and principles; (IV) enforcement of covenants and rules, including notice and hearing procedures and the schedule of fines; (V) inspection and copying of Association records by unit owners; (VI) investment of reserve funds; and (VII) procedures for the adoption and amendment of policies, procedures, and rules; and (VIII) written procedures for addressing disputes between the Association and Unit Owners.
- (c) 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 unit owners’ associations, the course content of such educational meetings and seminars shall be specific to Colorado, and shall make reference to applicable sections of C.R.S 38-33.3-209.7.
- (d) 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 its Executive Board under Colorado law. The criteria for compliance with this section shall be determined by the Executive Board, although the Declarant may satisfy this requirement by supplying information at the meeting at which it transfers control of the Association.

ARTICLE VI POWERS OF THE ASSOCIATION EXECUTIVE BOARD

Except as provided in the Bylaws and the Act, and as further set forth in various other provisions of this Declaration, the Executive Board may act in all instances on behalf of the Association to:

- 6.1 Adopt and amend rules and regulations regarding the use and enjoyment of the Common Elements and reasonable restrictions on the use of the Units;
- 6.2 Adopt and amend budgets, for revenues, expenditures and assessments, as further anticipated in Section 11.2 below;
- 6.3 Hire and terminate managing agents and other employees, agents and independent contractors;
- 6.4 Institute, defend or intervene in litigation or administrative proceedings in its own name or on behalf of itself or two or more Owners on matters affecting the Project;
- 6.5 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 written notice unless a shorter notice period is mutually agreed to by the parties to the contract;
- 6.6 Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- 6.7 Cause additional improvements to be made as part of the Common Elements;
- 6.8 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) Members entitled to cast at least sixty-seven percent (67%) of the votes agree to that action; and (b) the provisions of Article XVII are followed with respect

to approval of the first Mortgagees; and (c) all Owners to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

- 6.9 Grant easements, leases, licenses and concessions through or over the Common Elements, subject to approval by Owners;
- 6.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements, subject to approval by Owners;
- 6.11 Impose charges for late payment of Assessments, recover reasonable attorneys fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated; and, after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;
- 6.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;
- 6.13 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- 6.14 Assign its right to future income, including the right to receive Assessments;
- 6.15 Exercise any other powers conferred by the Declaration or Bylaws;
- 6.16 Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- 6.17 any other powers necessary and proper for the governance and operation of the Association.
- 6.18 Adopt guidelines, rules and regulations, protocols and policies required hereunder or under the Act, pertaining to Alternate Dispute Resolution, Responsible Governance Policies and education of the Board and/or Owners. To that end, the Board may delegate the right to evaluate and assist in drafting such documents to legal counsel or any committee of Owners formed for that purpose but, in any event, all such documents shall be subject to ultimate approval of the Board. Although consent of the Unit Owners is not specifically required, THE BOARD SHALL CAUSE COPIES OF ANY AMENDMENTS TO BE DELIVERED TO ALL OWNERS AND, IF A MAJORITY OF THE ASSOCIATION DO NOT REASONABLY OBJECT IN WRITING TO THE BOARD WITHIN THIRTY (30) DAYS, THEY SHALL BE DEEMED ACCEPTED BY THE OWNERS. If a majority of the Owners object to less than the entire amendment or document, in that instance, the remaining provisions shall be severable and approved independent of the objected terms. New Association Documents adopted by the Board shall have the SAME EFFECT AS IF THEY ARE A PART OF THIS DECLARATION. In the event of conflict between any other Bylaws or Declaration and that Association Document, the Bylaws or Declaration shall prevail BUT ONLY TO THE EXTENT the instrument attempts to invalidate the express language of the Bylaws or Declaration.

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 Owners shall be solely responsible to contractors, laborers, material-men 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 and 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 hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorney's 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 a Unit(s).

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 encroachments as 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. See Exhibit "C"

8.2

Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, the Association and/or for Owners, 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 development and sale 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, 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 television and electricity. Said blanket easement includes future utility services not presently available to the Units and the Common Elements 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 the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and Exterior Walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association, as to locations, which shall not be unreasonably withheld.

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 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 and all other areas of the Project to which they have an express or implied right to access, 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 the 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 scope of 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. As further defined herein and provided for in Article III herein, each Owner shall maintain and keep in repair his Unit, including the fixtures therein to the extent current repair shall be necessary in order to avoid damaging other Owners. EACH OWNER SHALL BE RESPONSIBLE FOR MAINTAINING ANY LIMITED COMMON ELEMENT ALLOCATED TO HIS UNIT, WHICH MAINTENANCE SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND REGULATIONS THAT THE ASSOCIATION MAY ADOPT FROM TIME TO TIME. 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 maintain Limited Common Elements allocated to his Unit free from clutter and debris. Each Owners 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, finished flooring and carpeting to the Exterior Walls, ceilings and floors within the Unit, including Unit doors, windows and screens. The Association reserves the right to assign further maintenance responsibility to the Unit Owner of certain areas of 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, non-discriminatory manner.

9.2 Owner's Failure to Maintain or Repair. In the event that a Unit (including the allocated Limited Common Elements, and other property assigned to the Owner for maintenance pursuant to Section 9.1) is not properly maintained and repaired, and if the maintenance responsibility for the un-maintained portion of the property lies with the Owner of the Unit, or in the event that the Unit is damaged 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 property 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 [or other property] negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit (or other property) to perform such work as is reasonably required to restore the Unit (or other property) 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 un-reimbursed 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 unpaid Assessments 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 the Units (except as set forth in Section 9.1 above and unless necessitated by damage caused by negligence, misuse or tortious act of an Owner or Owner's Agent as set forth in Section 9.4 below), which shall be the Common Expense of all Owners. However, that except as expressly provided in this Declaration, **the cost of maintenance and repair of Limited Common Elements undertaken by the Association shall be an expense of the Owner(s) allocated the Limited Common Elements so maintained and repaired.** For example, all Owners of those Units allocated Limited Common Element Parking Spaces may be assessed by the Association for any maintenance undertaken by the Association to the Parking Space(s) or Lot, all as further defined herein; each such Owner being assessed in proportion to the number of Owners so allocated that respective Limited Common Element. The Association's maintenance of the Common Elements shall include, but not be limited to, upkeep, repair and replacement, subject to any insurance or other requirements then in effect, of all landscaping and walls which Owners are not required to maintain as set forth in Section 9.1, gates, signage, Building fire system if any, Building security system if any, irrigation systems, sidewalks, driveways, roofs, exterior stairways 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. If the Declarant elects to conduct any maintenance or repair work on behalf of the Association, the Declarant shall bill the Association for the costs of the work conducted, providing documentation of the charges incurred. The Association shall reimburse the Declarant for the maintenance or repair within fifteen (15) days of the Association's receipt of the Declarant's invoice.
- 9.4 Association Maintenance as Common Expense. Except as otherwise provided herein, the cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner according to the Allocated Interests therefor set forth in Section 2.2 above. 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 instance of the Association shall also be a Common Expense of all of the Owners. However, if any damage to a Common Element or other Unit is caused by the **intentional, negligent or tortious acts** of an Owner or an Owner's Agent, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that 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 only by the Manager, the Executive Board or officers or employees of the Association unless otherwise delegated in writing by the Association, to have access to each Unit from time to time during reasonable hours on reasonable notice 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 an Owner's Agent, the then Owner(s) of the Unit(s) 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. In the event of damage or destruction of a Limited Common

Element caused by the negligence or tortious acts of an Owner or an Owner(s) Agent, said 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. Except to the extent of Declarant's reserved rights, the Association shall have the right and power to prohibit storage or other activities deemed, in the sole discretion of the Association, 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. Not later than the time of the first conveyance of a Unit to a purchaser other than the Declarant, 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 and licensed to provide insurance in the State of Colorado. A Unit Owner may file a claim against the policy of the Association to the same extent and with the same effect as if the Unit Owner were a named insured if the following conditions are met: (1) the Unit Owner has contacted the Board or manager in writing, and in accordance with any disclosed written policies or procedures of the Association regarding Owner-initiated insurance claims, supplying the time and circumstances of the event, the identification of the damaged property and the names and contact information of the witnesses or any injured persons and other supporting documentation requested by the Board; and (2) the Unit Owner has given the Association's agent a reasonable opportunity to inspect the damage; and (3) the subject matter of the claim falls within the Association's insurance responsibilities. However, before this process can be commenced the Owner must first notify its own personal insurance carrier of the damage. If the Board determines in its sole discretion that the claim is within the Association's insurance obligations, the Board may submit a claim to the Association's insurance carrier on behalf of the Owner as provided in that policy. In that event, or if the right to file the claim is denied by the Board, an Owner may not submit a claim to the Association's insurance carrier.

10.1.1 Property Insurance Coverage. Property insurance, with extended coverage, including fire, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), 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 Common Elements, and including all fixtures, interior and Exterior Walls and floors, partitions, decorated and finished surfaces of interior and Exterior 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, including FNMA and FHLMC, **but excluding** any betterments and improvements made by Owners, land, building excavations and foundations and items normally excluded from coverage. **Maximum deductible** amounts for such policy shall be determined by the Executive Board; provided, however, that if any Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. The Association shall obtain insurance covering the original specifications of each Unit. **Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit that increase the replacement value of his Unit.** In the event that a satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit

to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any **additional premiums** attributable to the specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 hereof in the event the Association pays such premium for an Owner. The Association shall also maintain appropriate **construction code endorsements** to the extent local law and building codes would require changes to undamaged portions of the building in the event of partial destruction of the Project. To the extent there may now or hereafter be a **steam boiler** on the Premises, the policy shall cover loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000.00 per accident location.

10.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance in such amounts as the Executive Board deems desirable, and as required by any applicable Agency, 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 (including property damage, bodily injury and death) in connection with the operation, maintenance and use of the Common Elements and public ways about the Project, including a "severability of interest" clause or specific endorsement, shall be maintained. 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 Denver metropolitan 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 satisfactory insurance, including worker's compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

10.2 Form. 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 Owners. Each Owner shall be an **insured person** under the policy with respect to liability arising out of such Owner's interest in a Unit or 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 that the Mortgage encumbers. The insurance company shall waive its rights of **subrogation** under the insurance policy against any Owner or member of the Owner's household. No **act or omission** by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall provide **primary insurance**. The policy shall recognize any **insurance trust** agreement. Said **policies are unacceptable** where (i) under the terms of the insurance carrier's charter, bylaws, or policy, contributions or assessments may be made against borrowers, an Agency or its designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Agency, or the borrowers from collecting insurance proceeds

10.3 Qualifications of Insurer. Subject to section 10.2 above, such policies must respectively 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; (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; or (c) is generally acceptable to the requirements of an Agency as provided under FNMA conventional home mortgage selling contract supplements and the FHLMC Seller's Guide.

- 10.4 **Owners' 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 (unless financed by a Mortgage to be purchased by FNMA of FHLMC); and casualty and public liability insurance for each Unit and Worker's Compensation for the work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. In addition, insurance costs may be assessed to a particular Unit or Units in proportion to any particular risk associated with that particular Unit or the uses occurring therein.
- 10.5 Certificates of Insurance; Cancellation. The Association shall issue certificates of insurance to each Owner and Mortgagee upon written request to the Association. 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 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 therefor having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid via United States mail to all Owners and to all First Mortgagees.
- 10.6 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 as provided under section 10.10 below 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 10.7 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.
- 10.7 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Sections 10.1, 10.2 & 10.9, 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 non-renewal 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 any other Mortgage. The Association's insurer, when determining premiums to be charged to the Association, shall not take into account any request by a Unit Owner for a clarification of coverage.
- 10.8 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:
- 10.8.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of at least sixty-seven percent (67%) of all Unit Owners then holding votes in the Association;

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

10.8.3 There is a vote not to rebuild by (a) Owners holding at least sixty-seven percent (67%) of the votes of the Association, and (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt; or

10.8.4 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 Allocated Interests.

10.9 Common Expenses. Premiums for insurance that the association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if the Association's property and extended coverage insurance covers fixtures, equipment or other property within or associated with some but not all of the Units (as required by any Agency including FNMA or FHLMC), or other insurance attributable to some but not all of the Units (such as the Parking Spaces), the Association reserves the right to charge the Owner(s) of such Unit(s) for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Association.

10.10 Insurance Trustee. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the owners Association, the owners Association's authorized representative, including any trustee with whom such owners Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each unit owner also appoints any Insurance Trustee or substitute Insurance Trustee designated by the owners Association, as attorney-in-fact as provided under subsection (b) to Article.

10.11 Flood Insurance. Should the Project now or hereafter be located within a area officially identified by HUD as having a special flood hazard and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the owners association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the owners association, but not less than the following: the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement cost of all such buildings and other insurable property within such area. Such policy shall be in a form that meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

- 10.12 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.
- 10.13 Other Insurance. The Association may 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 or as requested by an Agency.

ARTICLE XI ASSESSMENTS

- 11.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay the Association all: (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments described below.
- 11.2 Budget. As said requirements may be amended by under the Act from time to time, the Executive Board shall adopt a proposed budget for revenues, expenditures and reserves for the Project and shall submit the budget to the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.
- Within ninety days after adoption of any proposed budget for the common interest community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the budget such meeting shall occur within a reasonable time after mailing or other delivery of the summary or as allowed for in Article III of the Bylaws (*not less than fourteen nor more than sixty days*). The Executive Board shall give notice to the Unit Owners of the meeting as allowed for in the bylaws. The budget proposed by the Executive Board does not require approval from the Unit Owners and it will be deemed approved by the Unit Owners in the absence of a veto at the noticed meeting by a majority of all Unit Owners, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Executive Board and not vetoed by the Unit Owners must be continued until a subsequent budget proposed by the Executive Board is not vetoed by the Unit Owners.

11.3 Annual Assessments.

11.3.1 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. The first Annual Assessment shall commence upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser, unless the every Unit in the entire Project is sold as a whole, in which event the first Assessment shall occur until the date of the first closing on the sale or transfer of a Unit to any party other the transferee of the whole Project. Estimated Common Expenses shall include the cost of routine maintenance and operation of the Common Elements including, but not limited to that portion of real property taxes, if any, attributable to 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, water, sewer service and common utility charges, snow and trash removal, recycling charges, 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 in general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed. Should any taxing authority ever assess a tax upon the Common Elements, apart from each Unit, same shall be borne by each owner in accordance with their Allocated Interest.

11.3.2 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; provided, however, that the Association may, with the consent of Owners holding a majority of votes in the Association, designate any other installment period. 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 of their obligation to pay 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.

11.3.3 Assessment Escrow Agreements. The Association may enter into an escrow agreement with the holder of a Unit Owner's mortgage so that assessments may be combined with the Unit Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency

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 Board, and Association, in adopting the budget and assessments from time to time reserves the right to adjust and allocate expenses relating to particular Units to the Owners of those affected Units only based upon, without limitation: (i) expenses associated with Limited Common Elements appurtenant to that Unit; and/or (ii) increased insurance risk associated with a Unit or the use therein; and/or (iii) utilities in proportion to usage associated with that Unit as may be determined by meter readings, if available, or some other reasonable, tangible criteria associated with administration, use or occupancy. Moreover, to the extent certain Units are approximately, but not exactly, the same size, **ASSESSMENTS FOR SUCH SIMILARLY SIZED UNITS MAY BE GROUPED TOGETHER FOR CALCULATION AND THEIR RESPECTIVE ASSESSMENTS SET IN THE SAME AMOUNT** so long as acceptable to the corresponding Owners in their discretion at the time the assessments are adopted.

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 for 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; to wit, 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 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. Notice in writing of the amount of such Default Assessment and the time for payment of the Default Assessment 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. If payment is not made on or before the date set forth in such written notice, the Default Assessment shall become a lien against such Owner's Unit that may be foreclosed or otherwise collected as provided in this Declaration.

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 five (5) days after its due date, shall become 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) percentage points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish, not to exceed the maximum rate allowable under the Act;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate the remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year or other predetermined assessment period 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) Suspend the Owner's rights to use specific General Common Elements such as the laundry room, common storage or other Recreational Facilities of any nature benefiting all Units.

Subject to Section 17.1 below, 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 attorneys' fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

11.8 Personal Obligation. Each Assessment against a Unit is the personal obligation of the person or persons who owned the Unit at the time the Assessment became due and shall also pass to successors in title only if they assume same in writing or if required by local law. **By**

acceptance of a deed for a Unit, each Unit purchaser thereby consents to assume the joint obligation for all assessments due against the Unit pursuant to this Section. 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, and any penalties and interest thereon, the cost and expenses of such proceedings and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. This Section 11.8 is subject to the Mortgagees' Rights set forth in Section 17.1 below. In connection with any demand for payment or proceeding to collect any money or sums due to the Association, the Association may require reimbursement for its collection costs and reasonable attorney fees and costs incurred as a result of such failure without the necessity of commencing a legal proceeding.

11.9 Payment by Mortgagees. Any Mortgagee holding a lien on a Unit may paid 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 written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt requested, any Owner, designee of an Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. **THE STATEMENT SHALL BE FURNISHED WITHIN FOURTEEN (14) CALENDAR DAYS AFTER RECEIPT** of the request and is binding upon the Association, Executive Board and every Owner. If no such statement is mailed out certified, return receipt requested, first class postage (or personally delivered) to the inquiring party within that fourteen (14) day period, 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 Association 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. 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 ongoing basis, as may be determined by a majority of the Executive Board. The initial working capital fund shall be established and Annual Assessments shall commence upon the conveyance of the first Unit in the Project by Declarant to a third-party purchaser, unless the every Unit in the entire Project is sold as a whole, in which event the first assessment and capital fund shall occur until the date of the first closing on the sale or transfer of a Unit to any party other the transferee of the whole Project. Thereafter, Annual Assessments and the capital account shall be established in accordance with the provisions of the Declaration. Upon acquisition of record title to a Unit from Declarant, each such new Owner shall contribute to the working capital fund of the Association an amount equal to two-twelfths (3/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the new Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The working capital fund deposit made by Owner(s) shall be non-refundable from the Association and Sellers must recover same from purchasers, if at all. In the event Declarant pays into the working capital fund on behalf of a Unit prior to the initial sale of the Unit to an Owner, the new Owner shall reimburse such amount to Declarant upon the transfer of title to the Unit and the Owner's contribution to the Association's working capital fund hereunder shall be reduced by such amount. The working capital fund may be maintained by the Association in a segregated account, and in any event shall not be

used by the Declarant to defray any of its expenses, reserve contributions, or construction costs.

- 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, if required by the Association; (c) provide to the Association no less than once per month, an accounting for the previous month, including a budget/actual reconciliation report and; (d) provide to the Association an annual accounting and financial statement, including a budget/actual reconciliation report, of Association funds prepared by a certified public accountant.

ARTICLE XII DAMAGE OR DESTRUCTION

- 12.1 The Role of the Executive Board. Except as provided in Section 10.7, in the event of damage to or the destruction of all or any part of any Common Element, 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 provisions of Section 10.7 apply and **approval is obtained by a fifty-one percent (51%) vote of the First Mortgagees** of Units subject to First Mortgages (which percentage is measured by the 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 damages 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 property insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, 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 11.5, levy, assess and collect 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 a like manner if the amounts to be 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 the insurance proceeds, the balance from 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 accordance with the Units' Allocated Interests, 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 are 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 distributed as follows:

Unless within sixty (60) days after such taking, Declarant and/or Owners who combined represent at least sixty-seven percent (67%) of the votes in the Association and fifty-one percent (51%) of First Mortgagees of Units subject to First Mortgages (which percentage is measured by the votes allocated to such Units) shall otherwise agree, if the taking involves a portion of the Common Elements on which improvements have been constructed, 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 that is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision 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 in accordance with each Unit's Allocated Interests, 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 be deemed terminated thereby, 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 a 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
RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Notwithstanding any provision in this Declaration to the contrary, the rights reserved to Declarant in this Article may be exercised by Declarant without the consent of the Association, or of the Owners or Mortgagees of Units not owned by Declarant. After the termination of Declarant control, the Board may elect or consent to the exercise any of these applicable rights itself of by any individual Unit Owner.

- 15.1 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant to withdraw from the provisions of this Declaration individual Units and/or Common Elements; however, none of the real estate may be withdrawn after any Unit is conveyed by Declarant to a purchaser.
- 15.2 Reservation of Subdivision Rights. Pursuant to the Act, Declarant reserves the right for itself and any Successor Declarant to subdivide or convert a Unit that it owns into additional Units, Common Elements or a combination of same.
- 15.3 Create Limited Common Elements. Declarant reserves the right to create Limited Common Elements from time to time by: (1) converting existing General Common Elements, or (2) causing additional improvements to be made as part of Limited Common Elements. Additional Limited Common Elements shall be appurtenant to a particular Unit(s) upon recording in the office of the Clerk and Recorder an amendment to this Declaration executed by Declarant that identifies the Limited Common Element by reference to the Map and the Unit to which it is allocated.
- 15.4 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant:
 - (a) to allocate Limited Common Element Parking Spaces to particular Units by assignment and/or recorded amendment to this Declaration; and to reallocate Limited Common Elements among units to which it retains title.
 - (b) to complete improvements called for or anticipated herein including Section 2.31 above, and/or on the plats and Maps;

- (c) with respect to Units still owned by the Declarant, the right to modify, alter, move and relocate Unit or Common Element walls, floors and ceilings within or between such Units;
- (d) to maintain and relocate sales offices, management offices, signs advertising the Project and Units, and models of any size, within one or more of the Units and within the General Common Elements;
- (e) to appoint or remove any officer of the Association or any Executive Board member during the period of Declarant control as set forth and limited in Section 5.4 above;
- (f) Those easements reserved in favor of Declarant and described in Article VIII herein;
- (g) The right to establish, from time to time, by dedication or otherwise, utility and other easements for the purposes, including but not limited to streets, paths, walkways, sidewalks, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas and to create other reservations, exceptions and exclusions for the benefit of, and to serve, the Owners within the Project.
- (h) The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking, storage, Recreational Facilities and/or Common Elements, which may or may not be a part of the Project, for the benefit of the Owners and the Association.
- (i) Declarant also reserves any development rights created by any administrative, judicial or legislative action, including but not limited to any change in zoning regulations or rules, change in bulk plane limitations or any other rule or regulation adopted by any entity of state or federal government that establishes development rights to property in addition to those now existing for any defined Unit or the Project as a whole.
- (j) Declarant shall be free to convey, transfer or sell its retained development rights subject to all the terms herein.
- (k) To add a roof deck or balconies from the Building, appurtenant to particular Units, and/or add patios about the Property, appurtenant to particular units, either as General or Limited Common Elements.

15.5 Change in Allocated Interests. In the event Declarant or Successor Declarant exercises the right to add, withdraw or subdivide Units as set forth above, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

15.6 Declarant's Property. The Declarant reserves the right to retain all its property and equipment used in the sales, management, construction and maintenance of the Property, whether or not they have become fixtures.

15.7 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

15.8 Termination of Rights. Unless otherwise provided herein or required by the Act, the rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire on the earlier of: (a) the date Declarant transfers the last Unit it owns; or (b) two (2) years from the date of first conveyance of a Unit to its first purchaser; unless (i) such rights are extended as allowed by law; or (ii) reinstated or extended by the Association, subject to those terms,

conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE XVI ARCHITECTURAL CONTROL AND DESIGN REVIEW

- 16.1 Common Elements. Except for Declarant's reserved rights as hereinabove described, **no alteration or additions to the Common Elements of any kind shall be made unless first approved in writing by the Executive Board**, including, without limitation, structural, textural and color changes to walls, doors and windows. The Executive Board shall exercise reasonable judgment to insure 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 that the Executive Board reasonably determines do not conform to and harmonize with the existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.
- 16.2 Architectural Review. The Executive Board shall be responsible for the establishment and administration of Design Guidelines (the "Design Guidelines") to carry out the purposes and intent of this Declaration. The Executive Board may seek the advice of design professionals or other professionals if the need should arise. The Executive Board may 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, window coverings, antennae, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by a majority approval of the Executive Board and shall be made available to all Owners and their representatives for their review. Further, 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 City 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. Decisions concerning the approval or denial of a Unit Owner's application for architectural or landscaping changes shall be made in accordance with standards and procedures set forth in the Declaration or in duly adopted Rules and Regulations, written policy or Bylaws of the Association, and shall not be made arbitrarily or capriciously.
- 16.3 Requirement for Approval. **No improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Common Elements**, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Common Elements **until plans and specifications with respect thereto** satisfactory to the Executive Board 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 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 Owners' request for approval within sixty (60) days of the submission by Owner of all information requested by the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Non-structural improvements and alterations that are completely within an existing Unit may be

undertaken without such approval, by and at the cost of the Owner. All such improvements shall be insured by and at the cost of the Owner. An Owner undertaking such improvements shall indemnify the Association and the other Owners against any and all costs or damages attributable to the construction or existence of such improvements.

16.4 Violation. 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. Failure to timely reimburse the Association shall be deemed a Default Assessment with payment thereof subject to the provisions of Article 11.6.

16.5 Criteria for Approval. 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, easements and utilities, and such other information as may be requested –and approved in writing- by the Executive Board.

16.6 Fees. An Owner seeking architectural review approval shall promptly pay to the Association any fees set by the Executive Board in connection with the review process, and shall reimburse the Association for all of its costs relating to review and ongoing monitoring of construction, including the costs of staff and independent consultant review and assistance, as determined by the Association. The Association may assess these fees and costs against the Owner and the Unit as Default Assessments in the event the Owner fails to timely pay these fees and costs.

ARTICLE XVII MORTGAGEE'S RIGHTS

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

17.1 Title Taken by Mortgagee. Any Mortgagee holding any 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 which become due and payable after the date title to the Unit is acquired and for those annual Assessments accrued during the six (6) months immediately preceding the date title to the Unit is acquired.** The lien of the Association for unpaid Assessments shall not have priority over a Mortgage in the amount of over six (6) months of regular Common Expense Assessments. A Mortgagee or Agency that acquires title to a Unit through foreclosure of a Mortgage will not be liable for any fees or charges related to the collection of the six (6) months of unpaid Assessments that accrued before the Mortgagee or Agency acquired title to the Unit.

17.2 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall

take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a Mortgage against a Unit.

17.3 Right to Pay Taxes and Charges. Mortgagees who hold Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on 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 therefor from the Association.

17.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit of 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 Agency or Mortgagee.

17.5 Notice of Action. Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, **ONLY UPON PRIOR WRITTEN REQUEST TO THE ASSOCIATION** requesting that they be provided notice (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of (note: if no written request is submitted, the Mortgagee shall not be entitled to notice or participation):

17.5.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit, or the exclusive easement rights pertaining thereto; (b) the interest in the Common Elements appurtenant to the Unit, or the liability of Assessments relating thereto; (c) the vote 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 18.2 below;

17.5.2 Any proposed termination of the common interest community (except as provided in Section 13.3);

17.5.3 Any condemnation loss or any casualty loss which effects a material portion of the Project or which affects any Unit on which there is a Mortgage held, insured or guaranteed by such Agency (except as provided in Section 13.3);

17.5.4 Any delinquency in the payments of Assessments owed by an Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days; and

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

17.6 Notice to, and Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees and the Mortgagee has requested it be notified then dated, written notice and a copy of any relevant proposed amendment, document or action, shall be sent via certified mail to the mortgagee at the address on its recorded deed of trust or assignment thereof. If any Mortgagee fails to deliver a negative response within **sixty (60) days** after the date of notice, the Mortgagee shall be deemed to have approved the amendment, document or action. Note, however, that the procedure set forth above is not mandatory, and if the consent of the mortgagee is nevertheless actually obtained in writing without resort to this process, the notice to that mortgagee shall be deemed sufficient.

ARTICLE XVIII
DURATION OF COVENANTS AND AMENDMENT

- 18.1 Term. The covenants and restrictions of this Declaration shall run with and bind the project in perpetuity, subject to the termination provisions of the Act. Except as otherwise provided herein, the consent of Owners holding at least sixty-seven percent (67%) of the votes in the Association and the approval of First Mortgagees of Units to which at least sixty-seven percent (67%) of the votes in the Association appertain, shall be required to terminate this condominium regime.
- 18.2 Amendment. Without limiting the right of the Association to seek a court order reducing the required percentage, and except for amendments otherwise permitted to be undertaken by Declarant hereunder, the District Court of the County in which the Property is located, or pursuant to the Act, this Declaration, the Map or any provision of it may be amended at any time (a) by the affirmative vote or agreement of Owners holding **sixty-seven** percent (67%) of the votes in the Association; and (b) provided a First Mortgagee has requested notice in accordance with Section 17.5 above, the approval of **fifty-one** percent (51%) of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by the 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:
- 18.2.1 Voting and quorum requirements;
 - 18.2.2 Assessments, Assessment liens or subordination of such liens;
 - 18.2.3 Reserves for maintenance or repair and replacement of the Common Elements;
 - 18.2.4 Insurance or fidelity bonds;
 - 18.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements other than as set forth in Article XV;
 - 18.2.6 Responsibility for maintenance and repair of the Project;
 - 18.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community, subject to C.R.S. 38-33.3-221.5;
 - 18.2.8 Boundaries of any Unit;
 - 18.2.9 The interests in the Common Elements;
 - 18.2.10 Convertibility of Common Elements into Units, or of Units into Common Elements, or of a General Common Element into a Limited Common Element, or of a Limited Common Element into a General Common Element (which in all cases regarding the conversion of a Unit or Limited Common Element shall also require the consent of the Unit Owner or Owner of the Unit to which said Limited Common Element has been allocated); The procedure regarding the reallocation of Limited Common Elements is further described in Article III herein;
 - 18.2.11 Imposition of any restrictions on the leasing of Units;
 - 18.2.12 Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Unit;

18.2.13 Establishment of self-management by the Association where professional management has been required by an Agency;

18.2.14 Any provision which is for the express benefit of an Agency or Mortgagee, regardless of whether the amendment is material;

18.2.15 Hazard or fidelity insurance requirements; and

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

18.3 Amendment Procedure. Any amendment must be executed by the President of the Association and recorded in the real property records of the City and County of Denver, 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 to the Amendment; as further required under Section 217 of the Act. 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 this Declaration and the Act, including without limitation:

18.3.1 Declarant may amend the Declaration, a plat or a Map to correct clerical, typographical errors or technical errors, or in accordance with any Reserved Development Rights under Article XV herein;

18.3.2 Declarant hereby reserves the right to itself and the Association, without requiring or obtaining the consent of any Owner or Mortgagee, to amend the Map in order to conform said Map to the actual location of any improvement(s) constructed, installed or erected on the Property, or to establish and designate any Common Elements as Limited Common Elements. The rights accorded to Declarant in this Paragraph shall expire on the date of the conveyance, by Declarant, of the last Condominium Unit within this Project to the first purchaser thereof; and

18.3.3 Declarant may amend the Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets or Agencies.

ARTICLE XIX LIMIT ON TIMESHARING

No owner of any Unit shall offer or sell an interest in such a Unit under a “timesharing” or “interval ownership” plan, or any similar plan.

ARTICLE XX GENERAL PROVISIONS

20.1 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.

20.2 Enforcement. Except as otherwise provided or limited in this Declaration or the Act, the Executive Board, Declarant or Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the 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.

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

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

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THIS DECLARATION is executed this ____ day of October, 2006

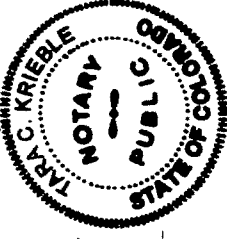
DECLARANT:

KRAMERIA 1530, LLC,
a Colorado limited liability company

By: *Gary A. McManis*
Manager

STATE OF COLORADO)
) ss:
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 27th day of November, 2006, by
GARY A. McMANIS, as manager of KRAMERIA 1530, LLC.



Witness my hand and official seal.

Tara C. Kriebel
Notary Public

My Commission Expires: 4/4/2010

LIENHOLDER'S CERTIFICATE

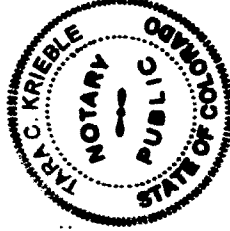
My Commission Expires 04/04/2010

Horizon Banks, N/A, as holder of the first deed of trust upon the Property, hereby consents and approves of the recording of this Declaration with Map and the submission of the Project to the covenants, conditions and restrictions herein.

By: *Mary L. Spencer*
AUP, as duly authorized
by Horizon Bank's

STATE OF COLORADO)
) ss:
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 27th day of NOVEMBER, 2006, by
MARY L. SPENCER as AUP LOAN OFFICER of HORIZON BANKS NA.



Witness my hand and official seal.

Tara C. Kriebel
Notary Public

My Commission Expires 04/04/2010

EXHIBIT "A"

1530 Krameria Street, Denver, CO 80220

Lots 14 through 17,
Block 46,
DOWNINGTON,
City and County of Denver, Colorado

EXHIBIT “B”

EAST COLFAX FLATS

Allocated Interests per Section 2.2.1

•FINAL INTEREST FIGURES AND SQUARE FOOTAGE BEING CALCULATED•

Based upon estimated average square footage of Unit in relation to all Units

Percent Allocated Interest is calculated based upon average square footage of similar types of Units in relation to all Units. Not every unit in the same category is exactly the same size.

UNIT NOS.	ALLOCATED INTEREST (Share of Common Expenses and ownership of Common Elements)
205	5.9%
105	5.9%
207	6.1%
104	6.1%
204	6.2%
101	7.9%
103	7.9%
201	8.1%
203	8.1%
106	8.5%
206	8.7%
102	10.2%
202	10.4%

Per Section 2.2.2, Voting shall be one vote per Unit, regardless of square footage.

**EXHIBIT “C”
Title Exceptions**

per Stewart Title Commitment no. 90176735, dated March 9, 2006

Terms and conditions of a Cable Television Installation Agreement, recorded September 19, 1983 at Reception No. 061516.

EAST COLFAX FLATS **ESTIMATED HOA BUDGET**

(for undivided ownership in common elements and liability for estimated monthly assessments)

Units	Estimated Monthly Assessment
5.9% 205 Units 5.9% 105	136.92 \$ 136.92
6.1% 207	141.56
6.1% 104 Units 6.2% 204	141.56 \$ 143.89
7.9% 101	183.34
7.9% 103 Units 8.1% 201	183.34 \$ 187.98
8.1% 203	187.98
8.5% 106 Units 8.7% 206	197.26 \$ 201.90
10.2% 102	237.00
10.4% 202	241.35

	ANNUAL	MONTHLY
INSURANCE	\$ 4,500.00	\$ 375.00
WATER, SEWER, WASTE MGMT.	\$ 14,499.00	\$ 1,208.25
GAS/ELECTRIC (Common)	\$ 1,800.00	\$ 150.00
TRASH REMOVAL	\$ 1,020.00	\$ 85.00
INTERIOR/EXTERIOR MAINTENANCE	\$ 3,500.00	\$ 292.00
RESERVE (10%)	\$ 2,531.00	\$ 211.00
TOTAL	\$ 27,849.00	\$ 2,320.75

* Units of the same approximate size are grouped together. The budget is not a guaranty of future operating costs or assessments which are subject to ongoing variance and modification per the Declaration of Condominium and Association Bylaws.

The current HOA assessments have been set by the Developer based upon its estimation of the operating costs of the Project for a one year period from adoption. The HOA has a limited operating history of less than one year, and the Developer has neither resided in the Project nor operated the building at one hundred percent occupancy. Therefore, DEVELOPER DOES NOT WARRANT that the current HOA assessments or reserves will be adequate for any period of time or purpose, and Buyer releases Seller from any claim based upon any discrepancy between the current dues and the ultimate operating costs