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CONDOMINIUM DECLARATION

FOR

1ST & MAIN



711595 10/12/1999 02:15P 134 Sara Fisher  
1 of 63 R 315.00 D 0.00 N 0.00 Eagle CO

TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE 1</b>	<b>IMPOSITION OF COVENANTS</b> ..... 1
Section 1.1.	Purpose ..... 1
Section 1.2.	Intention of Declarant ..... 1
Section 1.3.	Development and Use ..... 1
Section 1.4.	Declaration ..... 2
Section 1.5.	Covenants Running With the Land ..... 2
Section 1.6.	Master Declaration ..... 2
<b>ARTICLE 2</b>	<b>DEFINITIONS</b> ..... 2
<b>ARTICLE 3</b>	<b>DIVISION OF PROJECT</b> ..... 8
Section 3.1.	Division Into Units ..... 8
Section 3.2.	Delineation of Unit Boundaries ..... 8
Section 3.3.	Inseparability of Units ..... 9
Section 3.4.	Nonpartitionability of Common Elements ..... 9
Section 3.5.	Modifications to Unit ..... 9
Section 3.6.	Amendments Documenting Unit Modification ..... 10
Section 3.7.	Interior Modifications ..... 10
<b>ARTICLE 4</b>	<b>CONDOMINIUM MAP</b> ..... 10
Section 4.1.	Map ..... 10
Section 4.2.	Amendment ..... 11
<b>ARTICLE 5</b>	<b>OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS</b> 11
Section 5.1.	General Common Elements ..... 11
Section 5.2.	Limited Common Elements ..... 11
<b>ARTICLE 6</b>	<b>MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION</b> ..... 12
Section 6.1.	Association Membership ..... 12
Section 6.2.	Membership ..... 12
Section 6.3.	Voting Rights ..... 14
Section 6.4.	Declarant Control ..... 14
Section 6.5.	Executive Board ..... 14
Section 6.6.	Fairness Standard ..... 14
Section 6.7.	Owners' and Association's Address for Notices ..... 14
<b>ARTICLE 7</b>	<b>ASSOCIATION DUTIES</b> ..... 15
Section 7.1.	Association Management Duties ..... 15
Section 7.2.	Reserve Account ..... 16



Section 7.3. Section 7.4. Section 7.5. Section 7.6. Section 7.7. Section 7.8. Section 7.9. Section 7.10. Section 7.11. Section 7.12.  <b>ARTICLE 8</b> Section 8.1. Section 8.2. Section 8.3. Section 8.4. Section 8.5. Section 8.6. Section 8.7. Section 8.8. Section 8.9. Section 8.10. Section 8.11. Section 8.12. Section 8.13. Section 8.14. Section 8.15. Section 8.16.  Section 8.17. Section 8.18.  <b>ARTICLE 9</b> Section 9.1. Section 9.2. Section 9.3. Section 9.4.  <b>ARTICLE 10</b> Section 10.1. Section 10.2. Section 10.3. Section 10.4. Section 10.5.	Owner's Negligence..... Delegation of Management and Maintenance Duties..... Acquiring and Disposing of Personal Property ..... Cooperation with Associations..... Issuance of Rules and Regulations ..... Enforcement of Documents..... Identity of Executive Board and Managing Agent..... Payments to Working Capital Account ..... Implied Rights ..... Books and Records of the Association.....  <b>ASSESSMENTS</b> ..... Covenant of Personal Obligation of Assessments..... Purpose of Assessments ..... Commencement of Assessments ..... Amount of Total Annual Assessments ..... Apportionment of Annual Assessments ..... Annual Budget..... Special Assessments..... Limited Assessments - Residential..... Limited Assessments - Commercial..... Due Dates for Assessment Payments ..... Declarant's Obligation to Pay Assessments..... Default Assessments..... Lien for Assessments..... Effect of Nonpayment of Assessments..... Successor's Liability for Assessments ..... Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments..... Statement of Status of Assessments ..... Liens .....  <b>MAINTENANCE RESPONSIBILITY</b> ..... Owner's Rights and Duties with Respect to Interiors..... Responsibility of the Owner ..... Responsibility of the Association..... Owner's Failure to Maintain or Repair .....  <b>INSURANCE AND FIDELITY BONDS</b> ..... General Insurance Provisions ..... Cancellation ..... Policy Provisions ..... Insurance Proceeds ..... Association Policies.....	16 16 16 17 17 17 17 17 17 18 18  18 18 18 19 19 19 19 20 20 21 22 22 22 23 23 23 23 23 24 24 25 26  26 26 26 27 27  27 27 28 28 28 29
--	--	--



Section 10.6.	Insurer Obligation.....	29
Section 10.7.	Repair and Replacement.....	29
Section 10.8.	Premises as Common Expenses .....	29
Section 10.9.	Fidelity Insurance .....	30
Section 10.10.	Workmen's Compensation Insurance .....	30
Section 10.11.	Other Insurance .....	30
Section 10.12.	Insurance Obtained by Owners.....	30
<b>ARTICLE 11</b>	<b>CONVEYANCES AND TAXATION OF UNITS .....</b>	<b>31</b>
Section 11.1.	Contracts to Convey Entered into Prior to Recording of Map and Declaration.....	31
Section 11.2.	Contracts to Convey and Conveyances Subsequent to Recording of Map and Declaration .....	31
Section 11.3.	Conveyance Deemed to Describe an Undivided Interest in Common Elements .....	31
Section 11.4.	Separate Tax Assessments.....	31
<b>ARTICLE 12</b>	<b>MECHANICS' LIENS .....</b>	<b>32</b>
Section 12.1.	Mechanics' Liens .....	32
Section 12.2.	Enforcement by the Association.....	32
<b>ARTICLE 13</b>	<b>USE RESTRICTIONS .....</b>	<b>32</b>
Section 13.1.	Use of Units.....	32
Section 13.2.	Conveyance of Units .....	33
Section 13.3.	Use of Common Elements.....	33
Section 13.4.	Prohibition of Increases in Insurable Risks and Certain Activities	33
<b>ARTICLE 14</b>	<b>EASEMENTS .....</b>	<b>33</b>
Section 14.1.	Easement of Enjoyment.....	33
Section 14.2.	Delegation of Use .....	34
Section 14.3.	Recorded Easements.....	34
Section 14.4.	Easements for Encroachments.....	34
Section 14.5.	Utility Easements.....	34
Section 14.6.	Reservation of Easements, Exceptions and Exclusions .....	35
Section 14.7.	Reservation for Construction, Etc. ....	35
Section 14.8.	Emergency Access Easement.....	35
Section 14.9.	Maintenance Easement.....	35
Section 14.10.	Drainage Easement .....	35
Section 14.11.	Easements of Access for Repair, Maintenance, and Emergencies	35
Section 14.12.	Declarant's Rights Incident to Construction and Marketing.....	36
Section 14.13.	Right of Declarant and Association to Own Units and .....to Use Common Elements .....	36
Section 14.14.	Remodeling Easement.....	36
Section 14.15.	Signage Easement.....	36





711595 10/12/1999 02:15P 134 Sara Fisher  
 5 of 63 R 315.00 D 0.00 N 0.00 Eagle CO

Section 14.16.	Easement for Master Association .....	37
Section 14.17.	Easements Deemed Created .....	37
<b>ARTICLE 15</b>	<b>ASSOCIATION AS ATTORNEY-IN-FACT .....</b>	<b>37</b>
Section 155.1.	Appointment .....	37
Section 15.2.	General Authority .....	37
<b>ARTICLE 16</b>	<b>DAMAGE OR DESTRUCTION.....</b>	<b>37</b>
Section 16.1	The Role of the Executive Board .....	37
Section 16.3.	Estimate of Damages or Destruction.....	38
Section 16.4.	Repair and Reconstruction .....	38
Section 16.5.	Funds for Repair and Reconstruction.....	38
Section 16.6.	Insurance Proceeds Sufficient to Repair.....	38
Section 16.7.	Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment....	38
Section 16.8.	Repairs .....	40
Section 16.9.	Notice of Damage or Destruction to First Mortgagees .....	40
<b>ARTICLE 17</b>	<b>OBSOLESCENCE .....</b>	<b>40</b>
Section 17.1.	Adoption of Plan; Rights of Owners .....	40
Section 17.2.	Sale of Obsolete Units .....	41
<b>ARTICLE 18</b>	<b>CONDEMNATION .....</b>	<b>42</b>
Section 18.1.	Consequences of Condemnation .....	42
Section 18.2.	Complete Taking .....	42
Section 18.3.	Partial Taking .....	43
Section 18.4.	Reorganization.....	43
Section 18.5.	Repair and Reconstruction .....	43
Section 18.6.	Notice of Condemnation.....	43
Section 18.7.	Limitations on Actions of Association.....	43
<b>ARTICLE 19</b>	<b>ASSOCIATION MATTERS .....</b>	<b>43</b>
Section 19.1.	Master Association Matters .....	43
Section 19.2.	Enforcement of Master Declaration .....	44
Section 19.3.	Architectural Control.....	44
Section 19.4.	General Reservation .....	45
Section 19.5.	Access.....	45
Section 19.6.	Limit on Timesharing.....	45
Section 19.7.	Construction Activities.....	45
Section 19.8.	Amenities.....	45
<b>ARTICLE 20</b>	<b>MORTGAGEE PROTECTIONS .....</b>	<b>45</b>
Section 20.1.	Introduction .....	45
Section 20.2.	Percentage of Eligible Mortgage Holders .....	45

Section 20.3.	Notice of Actions.....	45
Section 20.4.	Consent Required .....	46
Section 20.5.	Notice of Objection .....	47
Section 20.6.	First Mortgagees' Rights.....	48
<b>ARTICLE 21</b>	<b>DURATION OF COVENANTS AND AMENDMENT.....</b>	<b>48</b>
Section 21.1.	Term .....	48
Section 21.2.	Amendment .....	48
Section 21.3.	Unilateral Amendment Rights Reserved by Declarant.....	48
Section 21.4.	Recording of Amendments.....	48
<b>ARTICLE 22</b>	<b>DECLARANT'S RIGHTS REGARDING TRANSFER .....</b>	<b>49</b>
<b>ARTICLE 23</b>	<b>MISCELLANEOUS .....</b>	<b>49</b>
Section 23.1.	Restriction on Declarant Powers .....	49
Section 23.2.	Enforcement .....	49
Section 23.3.	Nonwaiver .....	49
Section 23.4.	Severability .....	49
Section 23.5.	Number and Gender.....	49
Section 23.6.	Captions.....	50
Section 23.7.	Conflicts in Legal Documents .....	50
Section 23.8.	Exhibits.....	50

  
 711595 10/12/1999 02:15P 134 Sara Fisher  
 6 of 63 R 315.00 D 0.00 N 0.00 Eagle CO



CONDOMINIUM DECLARATION  
FOR  
1ST & MAIN

THIS CONDOMINIUM DECLARATION FOR 1ST & MAIN (this "Declaration") dated as of September 30, 1999, shall be effective upon recordation and is made by 1st & Main Development LLC, a Colorado limited liability company ("Declarant").

A. Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property").

B. Declarant desires to create a Condominium Project pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes Section 38-33.3-101, et. seq. on the Property, the name of which is 1st & Main. Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1  
IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a mixed use condominium project (the "Project") pursuant to the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised Statutes, within the Building (as hereinafter defined) and other improvements located on the Property, which Project shall contain both residential and commercial uses (that part of the Project to be used for residential purposes being referred to as the "Residential Project" and that part of the Project to be used for commercial purposes being referred to as the "Commercial Project").

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Project, further a plan for the improvement, sales, and condominium ownership of the Project, create a harmonious and attractive development, and promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of Units in the Project.

Section 1.3 Development and Use. Declarant hereby submits twenty-three (23) Commercial Units and fourteen (14) Residential Units (each such Units defined below) to this Declaration. The maximum number of condominium units in the Project is sixty (60). No additional Units exceeding the maximum number set forth above may be established on the Property by subdivision of existing Units, conversion of space, or otherwise.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and Declarant hereby



711595 10/12/1999 02:15P 134 Sara Fisher  
8 of 63 R 315.00 D 0.00 N 0.00 Eagle CO

declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

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

Section 1.6 Master Declaration. The Property is subject to the Declaration for Riverwalk recorded in the Office of the Clerk and Recorder of Eagle County, Colorado on April 17, 1995, in Book 665 at Page 400, as amended from time to time (the "Master Declaration").

**ARTICLE 2  
DEFINITIONS**

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

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as set forth in Article 33.3, Title 38, Colorado Revised States, as such act exists on the date hereof, except to the extent that the applicability of future amendments to the Act are mandatory.

Section 2.2 "Assessments" means the annual, special and default Assessments levied pursuant to Article 8 below and including, without limitation, General Assessments and Limited Assessments. Assessments are also referred to as a Common Expense Liability under the Act.

In order to establish the allocation of General Assessments levied against such Unit, the following formula is used:

2.2.1 The Residential Units, collectively, are responsible for thirty-three and one-third percent (33.33%) of the General Assessments. Such thirty-three and one-third percent (33.33%) allocation is further allocated among the Residential Units on the basis of a Residential Unit's square footage as a percentage of the total square footage of all Residential Units.

2.2.2 The Commercial Units are responsible for sixty-six and two-thirds percent (66.67%) of the General Assessments. Such sixty-six and two-thirds percent (66.67%) allocation is further allocated among the Commercial Units on the basis of a Commercial Unit's square footage as a percentage of the total square footage of all Commercial Units.

Section 2.3 "Association" means the 1st & Main Condominium Association, a Colorado nonprofit corporation, and its successors and assigns. The Association acts through its Executive Board unless a vote of the Owners is otherwise specifically required by this Declaration or by the Articles of Incorporation or Bylaws of the Association.

Section 2.4 "Building" means the building (including all fixtures and improvements contained within it) located on the Property in which Individual Air Space Units are located.

Section 2.5 "Commercial Directors" means any members of the Executive Board elected by the Commercial Owners in accordance with the procedures set forth in Article 6 below and in the bylaws of the Association.

Section 2.6 "Commercial Expenses" means the costs and expenses for items benefiting exclusively the Commercial Units, as more fully described in Section 8.9 below.

Section 2.7 "Commercial Owners" means those Owners of Units within the Project which are Commercial Units.

Section 2.8 "Commercial Unit" means the fee simple interest in and to an Individual Air Space Unit designated on the Map by the use of the prefix "E" or "W" before the Unit number, together with the undivided interest in the Common Elements appurtenant to the Individual Air Space Unit as specified in the attached Exhibit B.

Section 2.9 "Common Elements" means all of the Project, except the Individual Air Space Units, but including, without limiting the generality of the foregoing, the following components:

2.9.1 The Property, excluding improvements on the Property unless specifically described in this subsection; and

2.9.2 The Building (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, fireplaces, chimneys, chimney chases, roofs, patios, decks, balconies, corridors, lobbies, vestibules, stairs, elevators, entrances and exits; and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air-conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith and the areas designated on the Map as including those installations; except for the Individual Air Space Units; and

2.9.3 The yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property; and

2.9.4 The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and

2.9.5 In general, all other parts of the Project designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the separate Units, each Owner of a Unit having an undivided interest in the Common Elements as provided in Exhibit B attached hereto and incorporated herein.





In order to establish the allocation of undivided ownership interests in the Common Elements appurtenant to a Unit the following formula is used:

2.9.5.1 The Residential Units, collectively, are allocated thirty-three and one-third percent (33.33%) of the undivided ownership interests in the Common Elements. Such thirty-three and one-third percent (33.33%) allocation is further allocated among the Residential Units on the basis of a Residential Unit's square footage as a percentage of the total square footage of all Residential Units.

2.9.5.2 The Commercial Units are allocated sixty-six and two-thirds percent (66.67%) of the undivided ownership interests in the Common Elements. Such sixty-six and two-thirds percent (66.67%) allocation is further allocated among the Commercial Units on the basis of a Commercial Unit's square footage as a percentage of the total square footage of all Commercial Units.

Section 2.10 "Common Expense(s)" means and includes the following:

2.10.1 Expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of an Owner as delineated in Section 9.2 below;

2.10.2 Expenses declared Common Expenses by the provisions of this Declaration or the bylaws of the Association;

2.10.3 All sums lawfully assessed against the Units by the Executive Board;

2.10.4 Expenses agreed upon as Common Expenses by the members of the Association; and

2.10.5 Expenses provided to be paid pursuant to any Management Agreement.

Section 2.11 "Declarant" means 1st & Main Development LLC, a Colorado limited liability company and its successors and assigns. No party other than 1st & Main Development LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the real property records of Eagle County, Colorado, a written assignment from 1st & Main Development LLC of all or a portion of such rights and privileges.

Section 2.12 "Declaration" means this Declaration for 1st & Main, together with any supplement or amendment to this Declaration, recorded by Declarant in the office of the Clerk and Recorder of Eagle County, Colorado.

Section 2.13 "Director" means a member of the Executive Board.

Section 2.14 "Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the articles of incorporation and bylaws of the Association, the Map, and any procedures, rules, regulations, or policies relating to the Project adopted under such documents by the Association or the Executive Board.



Section 2.15 "Eligible Mortgage Holder" means the First Mortgagee or any insurer or guarantor of a First Mortgage which has notified the Association in writing of its name and address and its status as the holder, insurer or guarantor of a First Mortgage. Such notice shall be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 20 below, regardless of whether such Article requires notice to such party.

Section 2.16 "Executive Board" means the governing body of the Association, as provided in this Declaration and in the articles of incorporation and bylaws of the Association.

Section 2.17 "First Mortgage" means an unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Unit, and which, in any case, has priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 2.18 "First Mortgagee" means the Mortgagee under a First Mortgage.

Section 2.19 "General Assessments" means those Assessments levied against all Owners, as more fully discussed in Article 8 below.

Section 2.20 "General Common Elements" means the Common Elements, except for Limited Common Elements.

Section 2.21 "Guest" means any agent, employee, tenant, guest, licensee or invitee of an Owner, including, without limitation, any person occupying a Unit pursuant to leases, rental agreements or other occupancy agreements.

Section 2.22 "Individual Air Space Unit" means a single unit depicted on the Map and consisting of enclosed rooms in the Building and bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. For the purpose of defining an Individual Air Space Unit, the terms set forth below shall be defined as follows:

2.22.1 "Unfinished wall" means the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of an Individual Air Space Unit.

2.22.2 "Unfinished ceiling" means the beams, joists, and wooden or other structural materials which constitute the ceiling of an Individual Air Space Unit.

2.22.3 "Unfinished floor" means the beams, floor joists, and floor deck material which constitute the floor of an Individual Air Space Unit.

An Individual Air Space Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, awnings, doorsteps, stoops, and doors and door frames. An Individual Air





Space Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. An Individual Air Space Unit shall further include fixtures and hardware and all improvements contained within the unfinished perimeter walls, ceilings, and floors. An Individual Air Space Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Individual Air Space Unit and located within the unfinished walls, ceilings, and floors; provided, however, that an Individual Air Space Unit shall not include any of the structural components of the Building in which it is located or utility or service lines located within the Individual Air Space Unit but serving more than one Individual Air Space Unit.

Section 2.23 "Limited Assessments" means those Assessments levied against either the Residential Units or the Commercial Units, respectively, for expenses relating to Limited Common Elements appurtenant to such groups of Units or other expenses benefiting exclusively one such group, as more fully discussed in Article 8 below.

Section 2.24 "Limited Common Elements" means those parts of the Common Elements which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, entryway, or porch adjacent to an Individual Air Space Unit, storage spaces outside Individual Air Space Units and designated as Limited Common Elements serving those particular Individual Air Space Units, parking spaces which are designated as Limited Common Elements for particular Units on the Map, and any individual fireplace chimneys and flues in the Building, individual air-conditioning units and fixtures, and individual water and sewer service lines, hot water heaters, and any plumbing or other installation servicing an Individual Air Space Unit, including, but not limited to, all such items designated as Limited Common Elements on the Map. The deck, balcony or patio and the fireplace chimneys which are accessible from, associated with, and which adjoin a particular Individual Air Space Unit, without further reference thereto, shall be used in connection with such Individual Air Space 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 other instrument. In addition, reference may be made on the Map "LCE-R" or "LCE 301-314" (which are hereinafter referred to as "Limited Common Elements-Residential"), in which event such area shall be a Limited Common Element appurtenant to the Residential Units, and to "LCE-Commercial" or "LCE-C" (which are hereinafter referred to as "Limited Common Elements-Commercial"), in which event such area shall be a Limited Common Element appurtenant to the Commercial Units and all costs related to such areas shall be the responsibility of the Owners of such respective groups of Units, as more fully discussed in Sections 8.8 and 8.9 below.

Section 2.25 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Project.

Section 2.26 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Project.





Section 2.27 "Map" means the subdivision Map of the Project depicting the Property subject to this Declaration and includes any engineering survey or surveys of the Property locating the Commercial Units and the Residential Units in the Building and locating the Building on the Property, and depicting the floor plans of the Units together with other drawings or diagrammatic plans and information regarding the Property as may be included in the discretion of the Declarant, as recorded by Declarant in the records of the Clerk and Recorder of Eagle County, Colorado contemporaneously herewith and all supplements and amendments thereto.

Section 2.28 "Master Association" means Riverwalk Association, a Colorado nonprofit corporation, and its successors and assigns.

Section 2.29 "Master Association Documents" means the basic documents governing the Master Association, including, but not limited to, the Master Declaration, the articles of incorporation and bylaws of the Master Association, and any procedures, rules, regulations, or policies relating to the Master Association adopted under such documents by the Master Association or the executive board of the Master Association.

Section 2.30 "Master Common Elements" shall have the definition set forth in the Master Declaration.

Section 2.31 "Master Declaration" means the Declaration for Riverwalk, together with any supplement or amendment thereto, recorded by Declarant on April 17, 1995 in Book 665 at Page 400 of the Office of the Clerk and Recorder of Eagle County, Colorado, as amended from time to time.

Section 2.32 "Maximum Rate" shall mean two percentage points greater than that rate of interest charged by a bank designated from time to time by the Executive Board to the best commercial customers of the designated bank for short-term loans and identified as the "prime rate" by such bank as of the date on which such Maximum Rate is imposed with respect to any amount payable under this Declaration, or if less, the maximum rate allowed by law.

Section 2.33 "Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of the Project or which encumbers a Unit.

Section 2.34 "Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.35 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).



Section 2.36 "Project" means all of the Property, which is submitted to ownership by this Declaration and the Map, including, without limitation, the Individual Air Space Units and the Common Elements.

Section 2.37 "Property" means the real property described in the attached Exhibit A.

Section 2.38 "Residential Directors" means any members of the Executive Board elected by the Residential Owners in accordance with the procedures set forth in Article 6 below and in the bylaws of the Association.

Section 2.39 "Residential Expenses" means the costs and expenses for items benefiting exclusively the Residential Units, as more fully described in Section 8.8 below.

Section 2.40 "Residential Owners" means those Owners of Units within the Project which are Residential Units.

Section 2.41 "Residential Unit" means a Condominium Unit designated as Units 301 through 314, inclusive, on the Map, and not the Commercial Units.

Section 2.42 "Unit" means and refers to any condominium unit within the Project and shown on the Map.

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

### ARTICLE 3 DIVISION OF PROJECT

Section 3.1 Division Into Units. The Property is hereby divided into fourteen (14) Residential Units and twenty-three (23) Commercial Units. Each Unit consists of a fee simple interest in an Individual Air Space Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The Units may be subdivided or otherwise reconfigured as discussed in this Article below.

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

Section 3.3 Inseparability of Units. No part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of ownership prescribed in this Declaration. Each Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Unit, subject to Section 3.5 below. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire





Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association.

Section 3.4 Nonpartitionability of Common Elements. Subject to the provisions of this Article and Article 5 below, the Common Elements shall be owned in common by all of the Owners and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with Article 8 below.

Section 3.5 Modifications to Unit. With the prior written approval of the Executive Board in accordance with this Declaration, an Owner of a Unit may exercise certain rights to modify his Unit as provided below, subject to the approval of any First Mortgagee of the Unit in question and applicable governmental and/or quasi-governmental authorities having jurisdiction in such matters and further subject to the requirements of the Act. Those rights specifically include the right to resubdivide a Unit, to relocate boundaries between adjoining Units and to remove partitions between adjoining Units, to the fullest extent permitted under the Act.

Section 3.6 Amendments Documenting Unit Modification. Any resubdivision or other change in the dimensions of a Unit pursuant to Section 3.5 above will be accomplished by the recording of an amendment to the Map which has been approved by the Executive Board, any affected First Mortgagee and any authority or agency of Eagle County, Colorado and other applicable governmental or quasi-governmental authorities having jurisdiction in such matters, and by the recording of an amendment to this Declaration as provided in this Section.

The amended Map will set forth the following (in addition to any other information required by the Act or reasonably required by the Executive Board) with respect to the Unit or Units affected by the subdivision, alteration of boundaries or combination:

3.6.1 Common Elements. Any Limited Common Elements appurtenant to each Unit shown on the amended Map.

3.6.2 Floor Plans. The floor plans and linear dimensions of the interior of each Unit.

3.6.3 Identifying Number. The designation by number or other name or symbol of each Unit.



3.6.4 Elevation. The elevation of the unfinished interior surfaces of the floors and ceilings of the Units as established from a datum plane and the distance between floors and ceilings.

The amendment to this Declaration will set forth the ownership interest appurtenant to each Unit depicted on the amended Map, and such other information as the Executive Board may reasonably require.

Upon the recording and indexing of the amendments to the Map and to this Declaration in the Office of the County Clerk and Recorder as required by the Act, each of the new Units shown on the amended Map will be lawfully created with the ownership interest set forth in the amendment documents.

Section 3.7 Interior Modifications. Any Owner will have the right to remove, alter, construct or relocate any interior non-supporting walls within said Owner's Unit in order to alter the interior configuration of the Unit, and to make other improvements or alterations to his Unit that do not impair the structural or soundproofing integrity of any part of the Building, or the utility systems or mechanical systems serving any part of the Property other than the Owner's Units. Any such modifications will be carried out in accordance with the reasonable rules issued by the Executive Board from time to time pursuant to the bylaws, governing such matters, including, without limitation, hours of construction and noise abatement.

#### ARTICLE 4 CONDOMINIUM MAP

Section 4.1 Map. The Map shall be filed for record in the office of the County Clerk and Recorder of Eagle County, Colorado. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed for record following substantial completion of the Building and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall show the location of the Building on the Property; the floor and elevation plans; the location of the Units within the Building, both horizontally and vertically; the thickness of the common walls, if any, between or separating the Units one from the other, or one from Common Elements, as applicable; the Unit designations; designation of General Common Elements and Limited Common Elements; and such other information as Declarant may require in its discretion. The Map shall contain a certificate of a registered professional engineer or licensed architect or a licensed land surveyor certifying that the Map substantially depicts the location and the horizontal and vertical measurements of the Building and the Units, the dimensions and, if Declarant directs, the square foot areas of the Units, and the elevations of the unfinished floors and ceilings as constructed, and certifying that such Map is prepared subsequent to the substantial completion of the improvements. Each supplement or amendment shall set forth a like certificate when appropriate. The Map shall further contain such other information, certifications and depictions as may be required under Section 38-33.3-209 of the Act.





Section 4.2 Amendment. Declarant reserves the right to amend the Map, from time to time, to the fullest extent permitted under the Act including, without limitation, amendments to conform the Map to the requirements of the Act.

## ARTICLE 5 OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 5.1 General Common Elements. Every Owner and the Guests, tenants, invitees and licensees of each Owner, shall have a perpetual right and easement of access over, across, and upon the General Common Elements for the purpose of getting to and from the Unit and parking area of such Owner or Guest and the public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

5.1.1 The covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, the Map, the Master Declaration and the other Master Association Documents;

5.1.2 The right of the Master Association to regulate on an equitable basis the use of the Master Common Elements from time to time;

5.1.3 The right of the Association to regulate on an equitable basis the use of parking spaces, if any, which are General Common Elements or other storage spaces, if any, from time to time and to oversee maintenance and repair of all parking areas, regardless of whether such areas are General or Limited Common Elements (expenses relating to Limited Common Elements being the responsibility of the Owners of Units to which such Limited Common Elements are appurtenant);

5.1.4 The right of the Association and/or the Master Association to adopt, from time to time any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Project; and

5.1.5 The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Elements as the Association may determine are necessary or prudent.

### Section 5.2 Limited Common Elements.

5.2.1 Use and Enjoyment. Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements appurtenant to his Unit. The Map shall specify to which Unit or Units each Limited Common Element is allocated.

5.2.2 Parking. Individual parking spaces located within the parking areas of the Project may be designated on the Map as Limited Common Elements appurtenant to the individual Units and reserved for the exclusive use of the Owners and the tenants, lessees, licensees, permittees and invitees and Guests of the Owners of the Units. All remaining parking





spaces shall be designated as General Common Elements and subject to regulation by the Executive Board of the Association as provided in Section 5.1[C] above. No parking spaces shall be used to park boats, trailers, motorhomes, campers or other non-vehicular property. Notwithstanding the foregoing, the Executive Board may, at its sole discretion, approve the use of individual parking spaces or portions thereof for storage purposes, provided that such storage usage does not unreasonably interfere with the use of any other parking space and is not unsightly or otherwise offensive to other Owners. Further, parking spaces shall not be leased to any party who is not an Owner or lessee of a Unit.

5.2.3 Redesignation of Limited and General Common Elements. Declarant hereby reserves the right and grants to the Association the right to redesignate General Common Elements as Limited Common Elements and to reassign Limited Common Elements to the fullest extent permitted under the Act.

## ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 6.1 Association Membership. Every Owner shall be a member of the Association and shall remain a member for the period of the Owner's ownership of a Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. However, any Owner may appoint, in a written instrument furnished to the secretary of the Association, a delegate to exercise the rights of such Owner as a member of the Association, and in the event of such appointment, the delegate shall have the power to cast votes on behalf of the Owner as a member of the Association, subject to the provisions of and in accordance with the procedures more fully described in the bylaws of the Association.

Section 6.2 Membership. There shall be two classes of membership as follows:

6.2.1 Residential Unit Members. The Owner(s) of Residential Units and the Declarant so long as Declarant continues to own an interest in a Residential Unit.

6.2.2 Commercial Unit Members. The Owner(s) of the Commercial Units and the Declarant so long as Declarant continues to own an interest in a Commercial Unit.

Section 6.3 Voting Rights. Each Unit shall be allocated a number of votes for the purpose of matters relating to the General Common Elements or the Project as a whole equal to the same number which is described as a percentage interest in the General Common Elements allocated to each Unit as set forth in Exhibit B. In addition, each Residential Unit shall be allocated the number of votes for the purpose of matters relating to the Limited Common Elements-Residential or the Residential Project equal to the percentage interest in such Limited Common Elements-Residential allocated to such Unit as set forth in Exhibit B. Each Commercial Unit shall be allocated the number of votes for the purpose of matters relating to the Limited Common Elements-Commercial or the Commercial Project equal to the percentage



interest in such Limited Common Elements-Commercial allocated to such Unit as set forth in Exhibit B. The Association shall not have a vote with respect to any Unit which may be owned by it. Declarant shall be entitled to vote with respect to Units owned by it. Members of the Association may exercise such voting rights subject to and in accordance with the provisions below and those of the bylaws of the Association. All members of the Association shall be entitled to vote on all matters affecting the Project which are required by this Declaration or the Act to be submitted to the vote of the Owners; provided, however, certain issues relating to the operation and maintenance of the Project do and may affect only the valid interest of either the Residential Owners or the Commercial Owners, such as the operation and maintenance of the Limited Common Elements-Residential and the Limited Common Elements-Commercial. In addition, it is hereby determined that in order to protect the valid interests of the two classes of Residential Owners and Commercial Owners, each class requires representation on the Executive Board and is hereby entitled to elect certain Directors thereto. In order to protect the legitimate, distinct interests of both the Residential Owners and the Commercial Owners, the following matters shall be voted by each class of Residential Owners and Commercial Owners:

6.3.1 Election of Directors. The Executive Board shall consist of three (3) persons (except during the period of Declarant control described in Section 6.4 hereof and in the bylaws of the Association), of which the Residential Owners shall be entitled to nominate and elect one (1) of the three (3), and the Commercial Owners shall be entitled to nominate and elect two (2) of the three (3).

6.3.2 Approval of Budget. Each class of Owners shall have the right of approval of that portion of the budget pertaining to the Limited Common Elements related to such class.

6.3.3 Valid Class Interests. In addition to the foregoing, should the Executive Board deem a particular matter which is required by this Declaration or the Act to be submitted to the vote of the Owners to affect exclusively one class of membership of the Association, the Executive Board may give notice of a meeting of either the Residential Owners or the Commercial Owners exclusively and conduct a vote on the matter affecting only that class in order to protect the legitimate, valid interest of such class. Any determination by the Executive Board that a matter should be for the consideration of all Owners, and not for the independent consideration of either or both groups of the Residential Owners and the Commercial Owners, shall require, in addition to the affirmative vote of a majority of voting Directors of the Executive Board, the affirmative vote of at least one Director from each group of the Residential Directors and the Commercial Directors.

Where a vote by a class of membership is called as set forth herein, only those votes attributable to the class eligible to vote on the particular issue will be counted in determining whether the vote will constitute an act of the members of such class.

Notwithstanding any provision in this Declaration or in the bylaws of the Association, no term pertaining to voting requirements in this Declaration or in the bylaws shall be construed so as to violate the Act.



Section 6.4 Declarant Control. Notwithstanding anything to the contrary provided for herein or in the bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

Section 6.5 Executive Board. All members of the Executive Board shall be entitled to participate in Association affairs which affect the Project in its entirety, the General Common Elements, both the Residential Project and the Commercial Project, both the Residential Owners and the Commercial Owners, or the Common Expenses affecting both the Residential Project and the Commercial Project. The Residential Directors shall have the sole and exclusive authority on all matters which relate solely to the Limited Common Elements-Residential or to the Residential Units. The Commercial Directors shall have the sole and exclusive authority on all matters which relate solely to the Limited Common Elements-Commercial or to the Commercial Units. Any determination by the Directors that a matter should be for consideration of the entire Executive Board, and not for the independent consideration of either or both groups of the Residential Directors and/or the Commercial Directors, shall require, in addition to the affirmative vote of a majority of the voting Directors of the Executive Board, the affirmative vote of at least one Director from each group of the Residential Directors and the Commercial Directors.

Section 6.6 Fairness Standard. The Executive Board, the officers of the Association and the Association shall have the duty to represent the interest of both the Residential Owners and the Commercial Owners in a fair and just manner on all matters that may affect either or both classes of the Residential Owners and the Commercial Owners. In upholding their duties, the Executive Board, the officers and the Association shall be held in their decisions, including, without limitation the determination of whether a matter should be for the consideration of the entire Executive Board as described in Sections 6.3 and 6.5 above, to the standards of good faith and reasonableness with respect to such matters, taking into account the effect, if any, of the matter on the Project as a whole.

Section 6.7 Owners' and Association's Address for Notices. All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such registered address to the secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit.





If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

All notices and demands intended to be served upon the Executive Board shall be sent to the address as designated by the Executive Board from time to time by notice to all of the Owner and Eligible Mortgage Holders.

All notices given in accordance with this Section shall be sent either by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

## ARTICLE 7 ASSOCIATION DUTIES

### Section 7.1 Association Management Duties.

7.1.1 General Common Elements. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the General Common Elements (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 8.6. below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

7.1.2 Limited Common Elements - Residential. The Residential Owners shall be responsible for the exclusive management, control, maintenance, repair, replacement and improvement of the Limited Common Elements-Residential. The expenses, costs and fees of such management, operation, maintenance and repair of the Limited Common Elements-Residential shall be part of the Assessments to be paid by the Residential Owners for such Limited Common Elements-Residential and, subject to the budget approval procedures of Section 8.6 below, prior approval of the Residential Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

7.1.3 Limited Common Elements - Commercial. The Commercial Owners shall be responsible for the exclusive management, control, maintenance, repair, replacement and improvement of the Limited Common Elements-Commercial. The expenses, costs and fees of such management, operation, maintenance and repair of the Limited Common Elements-





Commercial shall be part of the Assessments to be paid by the Commercial Owners for such Limited Common Elements-Commercial and, subject to the budget approval procedures of Section 8.6 below, prior approval of the Commercial Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

7.1.4 Exclusive Limited Common Elements. Notwithstanding the foregoing, if any Limited Common Element-Residential or Limited Common Element-Commercial is exclusively allocated to one or more Units, the Owners of such individual Residential Unit(s) or Commercial Unit(s) shall be responsible for any Limited Common Elements-Residential or Limited Elements-Commercial allocated to such Unit(s), other than parking spaces which for purposes of this Section shall be maintained by the Association in the same manner as the other Limited Common Elements-Residential or Limited Common Elements-Commercial described above, and also responsible for other areas which, pursuant to Section 5.2.3 above, may be designated for use in connection with the Owner's Unit, and each Owner shall also be responsible for keeping the same in a good, clean, sanitary, and attractive condition.

Section 7.2 Reserve Account. The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis, the reserve funds to be designated for the use of either the General Common Elements, Limited Common Elements-Residential or Limited Common Elements-Commercial and segregated by account in these categories.

Section 7.3 Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of an Owner, or by an Owner's invitees, licensees, tenants or Guests, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with Article 8 below.

Section 7.4 Delegation of Management and Maintenance Duties. The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration.

Section 7.5 Acquiring and Disposing of Personal Property. The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is





intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

Section 7.6 Cooperation with Associations. The Association may contract or cooperate with other owners' associations or entities within the area as convenient or necessary to provide services and privileges, such as access to recreational facilities, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 7.7 Issuance of Rules and Regulations. The Residential Directors may make and amend reasonable rules and regulations governing the use and rental of the Residential Units and the use of the Limited Common Elements-Residential. The Commercial Directors may make and amend reasonable rules and regulations governing the use and rental of the Commercial Units and the use of the Limited Common Elements-Commercial. The Executive Board may, by a majority of the voting Directors, including the approval of at least one (1) Residential Director and one (1) Commercial Director, make and amend reasonable rules and regulations governing the use and operation of the General Common Elements or the Project as a whole, and those rules and regulations which have an effect on a group or one or more individuals within a group of either Commercial Unit Owners or Residential Unit Owners must have the approval of the Directors elected by such group of Owners affected. Notwithstanding the foregoing, any such rules and regulations shall not be inconsistent with the terms of this Declaration, including, but not limited to Article 13. In addition, such rules and regulations shall, when applied to each of the Units considering the use of such Unit, be equitable and reasonable as applied to the Unit with respect to the use thereof. The Executive Board shall provide thirty (30) days written notice prior to the adoption or amendment of any rules and regulations and provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 7.8 Enforcement of Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

Section 7.9 Identity of Executive Board and Managing Agent. From time to time, but no less than annually, there shall be mailed by the Association to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 7.10 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association shall collect at the time of the sale of each Unit an amount equal to three months' installments of annual Assessments at the rate in effect at the time of the sale. The Association shall maintain the working capital funds in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the members of the Association, provided that a written notice is sent





to Owners detailing the use of such funds prior to the Association expending such funds. Such payments to this fund shall not be considered advance payments of annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association.

Section 7.11 Implied Rights. The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Documents or reasonably necessary to effectuate any such right or privilege.

Section 7.12 Books and Records of the Association. The Managing Agent or the Executive Board, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees may inspect the records of receipts and expenditures of the Executive Board at convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the articles of incorporation and the bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all times during convenient weekday business hours.

## ARTICLE 8 ASSESSMENTS

Section 8.1 Covenant of Personal Obligation of Assessments. Declarant, by creating the Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Association, and hereby does so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Owner's Unit. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit.

Section 8.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Property and of the services and facilities located on the Property. Proper uses of the Assessments shall include, but are not limited to, the following:

8.2.1 Repairing, replacing, renovating and maintaining any of the Common Elements not made the responsibility of the Owners by Section 7.1 or Section 7.3 above, Section 9.2 below, or other provisions of this Declaration;



8.2.2 Installing, maintaining, and repairing underground utilities upon, across, over, and under any part of the Project which are not conveyed to and accepted by utility companies;

8.2.3 Furnishing garbage and trash pickup and water and sewer services to the Project;

8.2.4 Obtaining and maintaining insurance in accordance with the provisions of Article 10 below;

8.2.5 Establishing and maintaining reserves for repairs, replacement, maintenance, taxes, capital improvements, and other purposes;

8.2.6 Carrying out all other powers, rights, and duties of the Association specified in the Documents;

8.2.7 Generally, addressing any other expenses necessary to meet the primary purposes of the Association.

Notwithstanding the foregoing, in the event that any such activities benefit exclusively either the Residential Units or the Commercial Units, respectively, the expenses related thereto shall be a Limited Assessment as set forth in Sections 8.8 and 8.9 below.

Section 8.3 Commencement of Assessments. All of the Units shall be allocated full Assessments, subject to the provisions of Section 8.6 below, no later than six (6) months after Declarant conveys the first Unit in the Project to a purchaser.

Section 8.4 Amount of Total Annual Assessments. The total annual Assessments against all Units shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such fiscal year, as approved by the Owners pursuant to Section 8.6 below, which estimates may include, among other things, the costs associated with the items enumerated in Section 8.2 above, together with any other costs and fees which may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of the Documents. In the event of surplus funds remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves the Executive Board may within its discretion apply the surplus funds (a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future assessments or in the form of a distribution, or (d) any combination of the foregoing.

Section 8.5 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion to the respective undivided interests in the Common Elements appurtenant to the Units, as shown in Exhibit B, subject to the following provisions. The Total Limited Assessment for any fiscal year of the Association shall be assessed to the Residential Units or to the Commercial Units, as is applicable, in proportion to a Unit's undivided interests in the Common Elements as a percentage of the total undivided interests in the Common Elements of all Units within its same membership



classification. The Executive Board, with the assistance of any company providing insurance for the benefit of the Owners under Article 10, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as more fully detailed in Article 10.

Section 8.6 Annual Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting sixty percent (60%) of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy, and assess the Association's annual Assessments in accordance with the annual budget.

Section 8.7 Special Assessments. In addition to the annual Assessments authorized above, the Executive Board, if permitted under the Act, may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) against all of the Owners with respect to the General Common Elements or one or more of the classes of Owners with respect to their respective Limited Common Elements for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Project or of any facilities located on the Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied and assessed in connection with the General Common Elements pursuant to this Declaration shall be assessed by a majority of the voting Directors of the Executive Board, including the approval of at least one (1) Residential Director and one (1) Commercial Director, to the Condominium Units in proportion to the respective undivided interests in the General Common Elements allocated to the Units as shown in Exhibit B (except to the extent the assessment is made to less than an entire class of Owners based on the interest of one or more Owners in Limited Common Elements which exclusively serve the Unit(s) of such Owner or Owners); provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Condominium Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Any amounts determined, levied and assessed in connection with either the Limited Common Elements-Residential or the Limited Common Elements-Commercial pursuant to this Declaration shall be assessed by the Directors of the relevant class of Owners to such class of Owners in proportion to the respective undivided interests in either the Limited Common Elements-Residential or the Limited Common Elements-Commercial appurtenant to the Units as shown in Exhibit B; provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Condominium Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special assessments are currently restricted under the Act.



Notice in writing of the amount and time for payment of such special Assessment per Unit shall be given to the Owners, and no special Assessment payment shall be due less than thirty (30) days after such notice shall have been given.

If any of the special Assessments levied pursuant to this Section shall be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities) in the Project, and if the total amount of special Assessments levied for such construction shall exceed the greater of (i) \$20,000.00 in the aggregate (*i.e.*, the total amount of such special Assessments for all Units in the aggregate, and not \$20,000.00 per Unit), or (ii) ten percent (10%) of the gross annual budget of the Association for that year, then the use of special Assessments for such construction shall require the approval of the Owners representing at least two-thirds of the votes of the Association membership. The use of special Assessments pursuant to this Section for constructing any Common Elements shall not apply to the construction of any Common Elements which are to be constructed by Declarant as a part of its development of the Project.

#### Section 8.8 Limited Assessments - Residential.

8.8.1 Apportionment. Notwithstanding anything in the foregoing to the contrary, the Residential Owners shall be solely responsible for the payment of any and all expenses benefiting the Residential Units only, including, without limitation, expenses related to the Limited Common Elements-Residential, as a Limited Assessment levied against the Residential Units, except as otherwise provided in Section 8.8.2. Notwithstanding the foregoing, however, all of the Owners shall share, pro rata as part of a General Assessment, the expenses incurred by the Association in connection with the provision of services, facilities, supplies or other items generally provided or made available to all Owners or otherwise necessary or convenient for the existence, maintenance and/or safety of the Project and available for common use and enjoyment by all Owners, all of which expenses shall be deemed Common Expenses subject to a General Assessment.

8.8.2 Common and Residential Expenses. Although it is anticipated that the distinction between Common Expenses and Residential Expenses will be clear, it is possible that, at some time and from time to time, it will be difficult to determine whether and to what extent a particular item is to be deemed to be a Common Expense to be borne by all of the Owners or a Residential Expense to be borne by the Residential Units. In the event of any controversy or dispute arising as a result of the difficulty of determining whether and to what extent any particular item of expense is a Common Expense or a Residential Expense, such allocation shall be determined by the Executive Board, which shall endeavor, to the extent practicable, in good faith, to identify such items as being Common Expenses or Residential Expenses (or, to the extent deemed to be both, to allocate the portion thereof to be assessed as Common Expenses and the portion deemed to the Residential Expenses). Any expenses incurred or anticipated to be incurred by the Association which are determined by the Executive Board to be Residential Expenses shall be allocated among the Residential Owners, pro rata in accordance with their respective percentage interests in the Limited Common Elements-Residential, and shall be assessed as a Limited Assessment. Any expenses incurred or anticipated to be incurred which are determined by the Executive Board to be Common Expenses shall be allocated among all of the Owners, pro rata in accordance with their respective percentage interests in Common



Elements, and shall be assessed as a General Assessment. Any determination made by the Executive Board pursuant to this Section 8.8.2 shall be final and irrevocable, provided such determination shall have been made in good faith and without any willful disregard for the rights of and without any intent to discriminate against any particular Owner or any group of Owners.

Section 8.9 Limited Assessments - Commercial.

8.9.1 Apportionment. Notwithstanding anything in the foregoing to the contrary, the Commercial Owners shall be solely responsible for the payment of any and all expenses benefiting the Commercial Units only, including, without limitation, expenses related to the Limited Common Elements-Commercial, as a Limited Assessment levied against the Commercial Units, except as otherwise provided in Section 8.9.2. Notwithstanding the foregoing, however, all of the Owners shall share, pro rata as part of a General Assessment, the expenses incurred by the Association in connection with the provision of services, facilities, supplies or other items generally provided or made available to all Owners or otherwise necessary or convenient for the existence, maintenance and/or safety of the Project and available for common use and enjoyment by all Owners, all of which expenses shall be deemed Common Expenses subject to a General Assessment.

8.9.2 Common and Commercial Expenses. Although it is anticipated that the distinction between Common Expenses and Commercial Expenses will be clear, it is possible that, at some time and from time to time, it will be difficult to determine whether and to what extent a particular item is to be deemed to be a Common Expense to be borne by all of the Owners or a Commercial Expense to be borne by the Commercial Units. In the event of any controversy or dispute arising as a result of the difficulty of determining whether and to what extent any particular item of expense is a Common Expense or a Commercial Expense, such allocation shall be determined by the Executive Board, which shall endeavor, to the extent practicable, in good faith, to identify such items as being Common Expenses or Commercial Expenses (or, to the extent deemed to be both, to allocate the portion thereof to be assessed as Common Expenses and the portion deemed to be Commercial Expenses). Any expenses incurred or anticipated to be incurred by the Association which are determined by the Executive Board to be Commercial Expenses shall be allocated among the Commercial Owners, pro rata in accordance with their respective percentage interests in the Limited Common Elements-Commercial, and shall be assessed as a Limited Assessment. Any expenses incurred or anticipated to be incurred which are determined by the Executive Board to be Common Expenses shall be allocated among all of the Owners, pro rata in accordance with their respective percentage interests in Common Elements, and shall be assessed as a General Assessment. Any determination made by the Executive Board pursuant to this Section 8.9.2 shall be final and irrevocable, provided such determination shall have been made in good faith and without any willful disregard for the rights of and without any intent to discriminate against any particular Owner or any group of Owners.

Section 8.10 Due Dates for Assessment Payments. Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement,





without notice (except for the notices required by this Article), on the first day of each quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount of \$100 or such other charge as the Executive Board may fix by rule from time to time as provided in the bylaws of the Association to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a quarter or other applicable payment period.

Section 8.11 Declarant's Obligation to Pay Assessments. Declarant shall be obligated to pay the annual and special Assessments (including installments thereof) on each Unit owned by it.

Section 8.12 Default Assessments. All monetary fines assessed against an Owner pursuant to the Documents, or any expense of the Association which is the obligation of an Owner in accordance with this Declaration, shall become liens against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such default Assessment shall be sent to the Owner subject to the Assessment at least thirty (30) days prior to the due date.

Section 8.13 Lien for Assessments. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 8.14 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the bylaws of the Association and Section 8.14 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or the Managing Agent and shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 8.14 Effect of Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the Maximum Rate on any amount of the Assessment which was not paid within such thirty (30) day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) The Association may thereafter bring an action at law or in equity, or both, against any Owner





personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 8.8 above, any accrued interest under this Section, the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, or exercise the votes in the Association appurtenant to ownership of the Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 8.15 Successor's Liability for Assessments. Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, except as provided in Section 8.16 and Section 8.17 below, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest pursuant to the provisions of Section 8.17 below.

Section 8.16 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:



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

8.16.2 To the extent permitted under the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and

8.16.3 Any lien created by the Master Association Documents.

With respect to the foregoing subpart 8.16[B], to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in subpart 8.16[A] above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in subparts 8.16[A] and 8.16[B] above, and except as provided in Section 8.17 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 8.17 Statement of Status of Assessments. Upon fourteen (14) calendar days' written request by personal delivery or certified mail, return receipt requested, to the Managing Agent, Executive Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

8.17.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

8.17.2 The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;

8.17.3 The date of the payment of any installments of any special Assessments then existing against the Unit; and

8.17.4 Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 8.18 Liens. Except for annual, special, and default Assessment liens as provided in this Declaration, mechanics' liens (except as provided in Article 12 below), tax liens, and judgment liens and other liens validly arising by operation of law and liens arising under Mortgages, there shall be no other liens obtainable against the Common Elements or against the interest of any Unit in the Common Elements.

## ARTICLE 9 MAINTENANCE RESPONSIBILITY

Section 9.1 Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyance documents executed by Declarant in connection with sales or leases to initial purchasers or tenants of the Units, each Owner of a Unit shall have the exclusive right and duty to paint, tile, carpet, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, and doors forming the boundaries of such Owner's Individual Air Space Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, an Owner of a Unit shall not be permitted to improve or alter its Unit if such alteration or improvement in any way impacts a Common Element without compliance with all procedures and rules of the Association.

Section 9.2 Responsibility of the Owner. The Owner of a Unit at that Owner's expense shall maintain and keep in repair the interior of the Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Units or the Common Elements. All fixtures, equipment, and utilities installed and included in an Individual Air Space Unit, commencing at a point where the fixtures, equipment, and utilities enter the Individual Air Space Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair all windows and other glass items related to such Owner's Unit and any entry door or doors serving such Unit. No Owner shall allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing



systems or integrity of the Building, or impair any easement or hereditament. Except as otherwise provided in Section 7.1 above, the Owners of Units shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Elements at such Owner's expense. No Owner shall be responsible for repair occasioned by casualty unless such casualty is due to the act or negligence of the Owner, invitees, licensees, tenants or Guests of such Owner, as provided in Section 7.3 above. No Owner shall alter any Common Elements without the prior written consent of the Association.

Section 9.3 Responsibility of the Association. The Association, without the requirement of approval of the Owners but subject to Section 8.6 above, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all the Project not required in this Declaration to be maintained and kept in good repair by an Owner or Declarant. In the event that the Association fails to maintain in accordance with its responsibilities, the Master Association shall be authorized to assume the maintenance responsibilities of the Association hereunder and under the Master Declaration and to assess all costs thereof to the appropriate Owners.

Section 9.4 Owner's Failure to Maintain or Repair. In the event that portions of a Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 8 of this Declaration.

## ARTICLE 10 INSURANCE AND FIDELITY BONDS

Section 10.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available:

10.1.1 Property insurance on the Common Elements for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property policies; and





10.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements and the Association, in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.1.3 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 10.2 Cancellation. If the insurance described in Section 10.1 above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 10.3 Policy Provisions. Insurance policies carried pursuant to Section 10.1 above must provide that:

10.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

10.3.2 The insurer waives its rights to subrogations under the policy against any Owner or member of his household;

10.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

10.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees holding a first security interest in a Unit 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 First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.



Section 10.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the Property or the Project, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.6 Insurer Obligation. An insurer that has issued an insurance policy for the insurance described in Section 10.1 above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 10.7 Repair and Replacement.

10.7.1 Common Element Repair. 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:

10.7.1.1 The regime created by this Declaration is terminated;

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

10.7.1.3 Eighty percent (80%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

10.7.1.4 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.

10.7.2 Repair as Common Expense. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all 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 their respective ownership interests in the Common Elements.

Section 10.8 Premises as Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.9 Fidelity Insurance. To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers,





directors, trustees, and employees in an amount not less than two months' current Assessments plus reserves as calculated from the current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' current Assessments plus reserves, as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition, all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.10 Worker's Compensation Insurance. The Association shall obtain worker's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

Section 10.12 Insurance Obtained by Owners. It shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings and public liability insurance covering such Owner's Individual Air Space Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners.

The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file





copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

## ARTICLE 11 CONVEYANCES AND TAXATION OF UNITS

Section 11.1 Contracts to Convey Entered into Prior to Recording of Map and Declaration. A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Map and this Declaration in the office of the Clerk and Recorder of Eagle County, Colorado, may legally describe such Unit in substantially the manner set forth in Section 11.2 below and may indicate that the Map and this Declaration are to be recorded.

Section 11.2 Contracts to Convey and Conveyances Subsequent to Recording of Map and Declaration. Subsequent to the recording of the Map and this Declaration, contracts to convey, instruments of conveyance of the Unit or Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required under the Act or by the circumstances or appropriate to conform to the requirements of any governmental authority or any usage or requirement of law with respect thereto:

Unit \_\_\_\_\_, 1st & Main, according to the Map recorded \_\_\_\_\_, 1999, at Reception No. \_\_\_\_\_, and as defined and described in the Declaration for 1st & Main, recorded \_\_\_\_\_, 1999, at Reception No. \_\_\_\_\_ in the office of the Clerk and Recorder of Eagle County, Colorado (blanks to be filled in with applicable information).

Section 11.3 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Mortgage, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth in Section 11.2 above shall be construed to describe the Individual Air Space Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it (unless any such fixtures or improvements shall be Common Elements), and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 11.4 Separate Tax Assessments. Upon the recording of this Declaration and the filing of the Map for record in Eagle County, Colorado, Declarant shall deliver a recorded copy of this Declaration and the Map to the Assessor of Eagle County, Colorado, as provided by law, which notice shall set forth the descriptions of the Units, including the interest in the Common Elements appurtenant to the Units, so that thereafter all taxes, assessments, and other charges by the State or any governmental or political subdivision or any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment against the Units, valuation of the Common





Elements shall be apportioned among the Units in proportion to the fractional interest in the Common Elements appurtenant to such Units. Accordingly, the Common Elements shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes Subsection 38-33.3-105(2).

The lien for taxes assessed to the Owner or Owners of a Unit shall be confined to his Individual Air Space Unit and to his appurtenant undivided interest in the Common Elements. No forfeiture or sale of any Unit for delinquent taxes, assessment, or other governmental charge shall divest or in any way affect the title to any other Unit.

## ARTICLE 12 MECHANICS' LIENS

Section 12.1 Mechanics' Liens. Subsequent to the filing of the Map and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Individual Air Space Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper) the Association shall enforce the indemnity provided by the provisions of Section 12.1 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with Article 8 above.

## ARTICLE 13 USE RESTRICTIONS

Section 13.1 Use of Units. All Commercial Units shall be used solely for lawful commercial, nonresidential purposes in conformity with all zoning laws, ordinances and regulations and restrictions of record and shall meet, at all times and in all respects, the standard of the community of Edwards, Colorado. All Residential Units shall be used solely for lawful



residential purposes in conformity with all zoning laws, ordinances and regulations and restrictions of record and shall meet, at all times and in all respects, the standard of the community of Edwards, Colorado. Among the uses permitted are restaurant/bars, and the reasonable odors and noises deriving from any permitted facilities are expressly allowed. Notwithstanding the foregoing, no odor, noise or vibration shall have an unreasonable impact on any other Unit Owner or occupant. Owners of the Units may rent or lease such Units to others for these purposes. Owners will be subject to the rules and regulations of the Association.

Section 13.2 Conveyance of Units. All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 13.3 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Owner without the prior written approval of the Association.

Section 13.4 Prohibition of Increases in Insurable Risks and Certain Activities. Nothing shall be done or kept in any Unit or in or on the Common Elements, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any Guest, invitee, tenant, licensee or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, his Guests, invitees, tenants, licensees or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment as provided in Article 8 above.

## ARTICLE 14 EASEMENTS

Section 14.1 Easement of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article.



Section 14.2 Delegation of Use. Any Owner may delegate, in accordance with the Documents, the Owner's right of enjoyment in the Common Elements to the Owner's tenants, employees, invitees, licensees and Guests.

Section 14.3 Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat or map affecting the Property, and as shown on the recorded Map. The recording data for recorded easements, licenses or other matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit C.

Section 14.4 Easements for Encroachments. The Project, and all portions of it, are subject to easements hereby created for encroachments between Units, the Common Elements and the Master Common Elements as follows:

14.4.1 In favor of the Association and the Master Association so that they shall have no legal liability when any part of the Common Elements or the Master Common Elements encroaches upon on Individual Air Space Unit;

14.4.2 In favor of each Owner of each Unit so that the Owner shall have no legal liability when any part of his Individual Air Space Unit encroaches upon the Common Elements, the Master Common Elements or upon another Individual Air Space Unit;

14.4.3 In favor of all Owners, the Association, the Master Association and the Owner of any encroaching Individual Air Space Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Building or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project.

Section 14.5 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Executive Board shall have, and are hereby given, the right and authority to grant such





easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6 Reservation of Easements, Exceptions and Exclusions. Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, consistent with the ownership of the Project for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Project.

Section 14.7 Reservation for Construction, Etc.. Declarant hereby reserves for itself, its successors and assigns, an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress from properties abutting and contiguous to the Property, and for use of the Common Elements as may be reasonably necessary or incident to the construction of improvements relating to the Units or other improvements on 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 Property by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the office of the Clerk and Recorder, Eagle County, Colorado.

Section 14.8 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 14.9 Easement. An easement is hereby granted to the Association, the Master Association and any Managing Agent and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.10 Drainage Easement. An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 14.11 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements and/or Master Common Elements are or may be located within the Individual Air Space Units or may be conveniently accessible only through the Individual Air Space Units. The Owners of other Individual Air Space Units and the Association shall have the irrevocable right, to be exercised by the Association or the Master Association, as applicable, as the Owners' agent, to have access to each Individual Air Space Unit and to all Common Elements or Master Common Elements from time to time during such reasonable hours as may





be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements or Master Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements, Master Common Elements or to any Individual Air Space Unit. Subject to the provisions of Section 7.3 above, damage to the interior of any part of an Individual Air Space Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Individual Air Space Unit at the instance of the Association or of Owners shall be a Common Expense.

Section 14.12 Declarant's Rights Incident to Construction and Marketing. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Project, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or Guests, licensees or invitees of an Owner. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices or model Units so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit. The use by Declarant of any Unit as a model Unit, office or other use shall not affect the Unit's designation on the Map as a separate Unit.

Section 14.13 Right of Declarant and Association to Own Units and to Use Common Elements. An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas, and recreational areas for use by the Association within the General Common Elements, subject to all rules and regulations established under this Declaration. The Association shall also have the right (but not the obligation) to purchase and own any Unit for the purpose of maintaining an office for the Association or for any other use which the Association determines is consistent with the operation of the Project. The costs and carrying charges incurred by the Association in purchasing and owning any such Unit shall be part of the Common Expenses.

Section 14.14 Remodeling Easement. Declarant, for itself and its successors and assigns, including Owners, retains a right and easement in and about the Building for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Unit, including the right of access to such areas of the Common Elements as is reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

Section 14.15 Signage Easement. An easement on, in and about the Building and a right is hereby reserved to Declarant and its successors and assigns and granted to the Association and its successors and assigns to permit, authorize, regulate and deny signage in accordance with



applicable regulations of Eagle County and within the discretion of Declarant and/or the Executive Board of the Association.

Section 14.16 Easement for Master Association. The declarant under the Master Declaration and the officers, agents, employees and independent contractors of the Master Association shall have a nonexclusive easement to enter upon the Property for the purpose of performing or satisfying their respective obligations as set forth in the Master Declaration and other Master Association Documents.

Section 14.17 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

## ARTICLE 15 ASSOCIATION AS ATTORNEY-IN-FACT

Section 15.1 Appointment. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Project upon its damage, destruction, condemnation, or obsolescence as provided below in Articles 16, 17 and 18. In addition, the Association, or any insurance trustee or substitute insurance trustee designated by the Association, is hereby appointed as attorney-in-fact under this Declaration for the purpose of purchasing and maintaining insurance under Article 10 above, including: the collection and appropriate disposition of the proceeds of such insurance; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any insurance trustee, shall hold or otherwise properly dispose of any insurance proceeds in trust for the Owners and their Mortgagees, as their interests may appear. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointments of the attorneys-in-fact as provided above.

Section 15.2 General Authority. As attorney-in-fact, the Association shall have full and complete 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 or appropriate to exercise the powers granted to the Association as attorney-in-fact.

## ARTICLE 16 DAMAGE OR DESTRUCTION

Section 16.1 The Role of the Executive Board. Except as provided in Section 16.6, in the event of damage to or destruction of all or part of any Unit, Common Elements, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Project, including, without limitation, the floor coverings, fixtures, and appliances initially installed therein by Declarant, and replacement thereof installed by the



Owners up to the value of those initially installed by Declarant, but not including any furniture, furnishings, fixtures, equipment, or other personal property supplied or installed by the Owners in the Units unless covered by insurance obtained by the Association. To the extent the damage or destruction affects all or part of any Unit or the Limited Common Elements relating to an individual class of Owners, the Directors representing the Owners of the Units or Limited Common Elements damaged shall perform the foregoing functions. Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of the Unit.

Section 16.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Project, the Association 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 of that part of the Project damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed part of the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Individual Air Space Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before.

Section 16.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Project damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary in connection with that action.

Section 16.4 Funds for Repair and Reconstruction. Subject to the provisions of Section 16.6 below, the proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction.

Section 16.5 Insurance Proceeds Sufficient to Repair. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 16.6 Insurance Proceeds Insufficient to Repair; Special Assessment; Remedies for Failure to Pay Special Assessment. If the insurance proceeds are insufficient to repair and reconstruct the improvements damaged, and if such damage is not more than seventy percent (70%) of the total replacement cost of all of the Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and, if permitted under the Act, the proceeds of a special Assessment to be made against all of the Owners and their Units, subject to the third full paragraph of this Section. Any such special Assessment shall be a Common Expense in accordance with Section 8.7 above and shall be due and payable within thirty (30) days after written notice as provided in Article 8 above. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the improvement



using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment.

Any Assessment provided for in this Section shall be a debt of each Owner and a lien on the Owner's Unit and may be enforced and collected as provided in Article 8 above. In addition, the Association as attorney-in-fact shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this Section. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the Maximum Rate on the amount of the Assessment, and all reasonable attorneys' fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association as attorney-in-fact in the following order:

16.6.1 For payment of real property ad valorem taxes, special assessment liens duly imposed by a governmental subdivision, and customary expenses of sale;

16.6.2 For payment of the balance of the lien of any First Mortgage affecting the Unit;

16.6.3 For payment of unpaid Association Assessments, interest, costs, late charges, expenses, and attorneys' (and legal assistants') fees;

16.6.4 For payment of junior Mortgages affecting the Unit in the order of and to the extent of their priority; and

16.6.5 For payment of the balance remaining, if any, to the Owner of the Unit.

If the insurance proceeds are insufficient to repair and reconstruct the improvements, and if such damage is more than seventy percent (70%) of the total replacement cost of all of the Units in the Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and, if permitted under the Act, the proceeds of a special Assessment made against all of the Owners and their Units, provided, however, that Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more and fifty-one percent (51%) of the First Mortgagees of record (based on one vote for each Mortgage owned) may elect to terminate the Project, as provided in Articles 20 and 21 below; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's president and secretary or assistant secretary, the entire Project shall be sold pursuant to the provisions of this Section, by the Association as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, and the articles of incorporation, and bylaws of the Association. Assessments for Common Expenses shall not be abated during the period prior to sale.



In such event, the insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's interest in the Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contributions from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Unit Owner's interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association as attorney-in-fact for the same purposes and in the same order as is provided in Sections 16.6[A] through 16.6[E] above.

In the event that the Owners and First Mortgagees do not elect to terminate the Project as provided above, Owners representing at least eighty percent (80%) of the total allocated votes in the Association (other than Declarant) and all directly adversely affected Owners may alternatively agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

Section 16.7 Repairs. All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Map, and the original plans and specifications for the Project unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Documents.

Section 16.8 Notice of Damage or Destruction to First Mortgagees. In the event that any portion of the Project encompassing more than one Individual Air Space Unit is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units within a reasonable time following the event of casualty damage.

## ARTICLE 17 OBSOLESCENCE

Section 17.1 Adoption of Plan; Rights of Owners. The Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction thereof, which plan must have the approval of at least fifty-one percent (51%) of the First Mortgagees (based on one vote for each Mortgagee owned) of record at the time of the adoption of such plan. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the office of the Clerk and Recorder of Eagle County, Colorado, and the expense of renewal and reconstruction shall be payable by all of the Owners as





Common Expenses; provided, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that his Unit shall be purchased by the Association for the fair market value of the Unit in cash or certified funds. The Association shall then have thirty (30) days after the expiration of such fifteen (15) day period within which to cancel such plan. If such plan is not canceled, the Unit of the requesting Owner shall be purchased according to the following procedures.

If such Owner and the Association can agree on the fair market value of the Unit, then such sale shall be consummated within ninety (90) days after such agreement. If the parties are unable to agree, the date when either party notifies the other that no agreement may be reached shall be the "commencement date" from which all periods of time mentioned hereafter shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser.

The decision of the appraisers as to the fair market value, or in the case of their disagreement, then such decision of the umpire shall be final and binding, and a judgment based upon the decision rendered may be entered in any court having jurisdiction thereof. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same order as provided in Sections 16.6[A] through 16.6[E] above.

Section 17.2 Sale of Obsolete Units. The Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more may agree that the Units are obsolete and that the Project should be sold. Such an agreement must have the approval of at least fifty-one percent (51%) of the First Mortgagees of record (based on one vote for each Mortgage owned) at the time such agreement is made. In such instance, the Association shall immediately record in the office of the Clerk and Recorder of Eagle County, Colorado, a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Project shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, and the articles of incorporation and bylaws of the Association. Unless otherwise agreed in writing by all the Owners and First Mortgagees, the sale proceeds (and any insurance proceeds under Section 10.4 above) shall be apportioned among the Owners in proportion to each Owner's undivided interest in the Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account





representing one Unit. Each such account shall be in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner and designated as an agency account. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Sections 16.6[A] through 16.6[E] above.

## ARTICLE 18 CONDEMNATION

Section 18.1 Consequences of Condemnation. If, at any time or times during the continuance of the Project pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation, then all compensation, damages, or other proceeds of condemnation, the sum of which is referred to as the "condemnation award" below, shall be payable to the Association, and the provisions of this Article shall apply.

Section 18.2 Complete Taking. In the event that the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the ownership pursuant this Declaration shall terminate, subject to the provisions of Section 18.7 below. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. Such award shall be apportioned among the Owners and the Mortgagees on the basis of the undivided interest in the Common Elements appurtenant to the Unit in which such Owners and Mortgagees have an interest; provided, however, that if a standard different from the value of the Project as a whole is employed to measure the condemnation award in the negotiation, judicial decree, or otherwise, then in determining such apportionment the same standard shall be employed. The Association shall, as soon as practical, determine the share of the condemnation award to which each Owner and Mortgagee is entitled, and such shares shall be paid into separate accounts and disbursed as soon as practical for the same purposes and in the same order as is provided in Sections 16.6[A] through 16.6[E] above.

Section 18.3 Partial Taking. In the event that less than the entire Project is taken or condemned or sold or otherwise disposed of in lieu or in avoidance of condemnation, the ownership under this Declaration shall not terminate. Each Owner (and Mortgagee holding an interest in such Owner's Unit) shall be entitled to a share of the condemnation award to be determined under the following provisions. The condemnation award shall be paid to the Association for the use and benefit of the Owners and the Mortgagees as their interests may appear. As soon as practical, the Association shall reasonably and in good faith allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners, unless otherwise required under the Act, as follows:

18.3.1 The total amount allocated to a taking of or injury to the Common Elements shall be apportioned among Owners and their Mortgagees on the basis of each Owner's undivided interest in the Common Elements;



18.3.2 The total amount allocated to severance damages shall be apportioned to the Owners and Mortgagees of those Units which were not taken or condemned;

18.3.3 The respective amounts allocated to the taking of or injury to a particular Unit or to improvements an Owner has made within the Owner's own Unit shall be apportioned to the Owner and Mortgagees of that particular Unit involved; and

18.3.4 The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances.

If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees.

Section 18.4 Reorganization. In the event a partial taking results in the taking of an Individual Air Space Unit, the Owners thereof shall automatically cease to be members of the Association, and their ownership interests in the Common Elements shall terminate and vest in the Owners of the remaining Units. Thereafter, subject to the provisions of Section 18.7. below, the Association shall reallocate the ownership, voting rights, and Assessment ratios determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners and the First Mortgagees of the remaining Individual Air Space Units for the amendment of this Declaration.

Section 18.5 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained in Article 16 above.

Section 18.6 Notice of Condemnation. In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

Section 18.7 Limitations on Actions of Association. Except as provided by statute, in case of condemnation, unless Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more have given their prior written approval, the Association may not take any of the actions specified in Sections 18.1 through 18.6 above.

## ARTICLE 19 ASSOCIATION MATTERS

Section 19.1 Master Association Matters. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Property is subject to the Master Declaration, (b) by virtue of his ownership, he has become a member of the Master Association, and (c) such Owner is subject to any rules and regulations of the Master Association. Each Owner, by accepting a deed to a Unit, acknowledges that he has received a copy of the Master Declaration and the articles of



incorporation and bylaws of the Master Association. The Owner agrees to perform all of his obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of the Master Association.

Section 19.2 Enforcement of Master Declaration.

19.2.1 Association. The Association shall have the power, subject to the primary power of the executive board of the Master Association, to enforce the covenants and restrictions contained in the Master Declaration, but only if said covenants and restrictions relate to the Property, and to collect assessments on behalf of the Master Association.

19.2.2 Supplement. This Declaration is intended to supplement the Master Declaration as it applies to the Property. In addition to all of the obligations which are conferred or imposed upon the Association pursuant to this Declaration, the bylaws or the articles of incorporation, the Association shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration and the bylaws and articles of incorporation of the Master Association. The Association and all committees thereof shall also be subject to all superior rights and powers which have been conferred upon the Master Association pursuant to the Master Declaration and the bylaws and articles of incorporation of the Master Association. The Association shall take no action in derogation of the rights of, or contrary to the interests of, the Master Association.

Section 19.3 Architectural Control.

19.3.1 Alterations. No exterior addition to or change or alteration to a Unit or any portion of the Project shall be made without the written consent of the Executive Board of the Association, including any change to signs, windows, lighting or any other exterior or structural item, which consent shall be granted or denied in the sole discretion of the Executive Board.

It is hereby acknowledged that there may be designated on the Map exterior walls or surfaces adjacent to certain Units which are deemed to be Limited Common Elements (but only to the extent such walls or surfaces are not structural in nature). No exterior or structural addition to or change or alteration to a Residential Unit or to the Limited Common Elements-Residential (including the construction of any additional skylight, window, awning or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Residential Directors of the Association. No exterior or structural addition to or change or alteration to a Commercial Unit or the Limited Common Elements-Commercial (including the construction of any additional skylight, window, awning or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Commercial Directors of the Association.





19.3.2 Approvals. After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by the Master Association Documents and by any governmental or quasi-governmental body having jurisdiction over the Property.

Section 19.4 General Reservation. Declarant reserves the right to dedicate any access roads and streets serving the Property for and to public use, to grant road, driveway and/or parking easements with respect thereto and to allow such road, driveway and/or parking to be used by owners of adjacent land and the general public.

Section 19.5 Access. Each Owner acknowledges that the access roads to and within the Project may be private, limited access roads. Each Owner, by accepting a deed to a Unit, agrees to be subject to the easements and the rules and regulations of the Association or Master Association governing the use of roads, as from time to time in effect.

Section 19.6 Limit on Timesharing. No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

Section 19.7 Construction Activities. Each Owner is hereby advised that substantial construction-related activities relating to the development of the Project, adjacent projects or other development within the Town of Edwards may cause considerable noise, dust and other inconveniences to the Owners.

Section 19.8 Amenities. No interest in any amenity located on or near the Project, such as swimming pools, spas, golf facilities, ski facilities or the like, shall be conveyed to an Owner pursuant to this Declaration. The owners of those facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Owners within the Project.

## ARTICLE 20 MORTGAGEE PROTECTIONS

Section 20.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Mortgages. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 20.2 Percentage of Eligible Mortgage Holders. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it shall mean the approval or consent of Eligible Mortgage Holders under Mortgages encumbering Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Mortgages held by Eligible Mortgage Holders.

Section 20.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgage Holder of the following:



20.3.1 Any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible Mortgage Holder.

20.3.2 Any lapse, cancellation, a material modification of any insurance policy or fidelity bond maintained by the Association.

20.3.3 Any proposed action which would require the consent of Eligible Mortgage Holders as required in Section 20.4 below.

20.3.4 Any judgment rendered against the Association.

Section 20.4 Consent Required.

20.4.1 Document Changes. Except as provided in Section 22.3 below, no amendment of any material provision of this Declaration described in this Section 20.4.1. may be effective without the vote of Owners representing at least sixty seven percent (67%) of the ownership interests in the Common Elements and until approved in writing by at least fifty one percent (51%) of the Eligible Mortgage Holders. "Material" provisions include any provision affecting the following:

20.4.1.1 Assessments, Assessment liens, or subordination of Assessment liens.

20.4.1.2 Voting rights.

20.4.1.3 Reserves for maintenance, repair and replacement of Common Elements.

20.4.1.4 Responsibility for maintenance and repair.

20.4.1.5 Rights to use Common Elements.

20.4.1.6 Reallocation of interests in the Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and the Eligible Mortgage Holders having an interest in such Units must approve such action.

20.4.1.7 Definitions of boundaries of Units except as provided in Section 14.4 and except with respect to boundaries of only adjoining Units which may be involved, in which case only those Owners and the Eligible Mortgage Holders having an interest in such Units must approve the action.

20.4.1.8 Expansion or contraction of the Project.

20.4.1.9 Insurance or fidelity bonds.



20.4.1.10 Imposition of restrictions on an Owner's right to sell or transfer his Unit.

20.4.1.11 Restoration or repair of the Project after hazard damage or partial condemnation in a manner other than that specified in this Declaration.

20.4.1.12 Termination of this Declaration after the occurrence of substantial destruction or condemnation.

20.4.1.13 The benefits of Eligible Mortgage Holders.

20.4.2 Actions. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the approval of at least fifty one percent (51%) of the Eligible Mortgage Holders:

20.4.2.1 Conveyance or encumbrance of the Common Elements (provided, however, that the granting of easements for public utilities, for construction and maintenance of roads within the Project, or for other purposes, and the granting of leases, licenses or concessions through or over the Common Elements, which are not inconsistent with the use of the Common Elements by the Owners will not be deemed a conveyance, encumbrance or other transfer within the meaning of this clause).

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

20.4.2.3 Termination of this Declaration for reasons other than substantial destruction or condemnation, as permitted with the approval percentages specified in Articles 16 and 18 above.

20.4.2.4 Merger of the Project with any other common interest community.

20.4.2.5 The assignment of the future income of the Association, including its right to receive Assessments.

20.4.2.6 Any action not to repair or replace the Common Elements except as permitted under Articles 16 and 18 above.

20.4.2.7 Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner.

Section 20.5 Notice of Objection. Unless an Eligible Mortgage Holder provides the secretary of the Association with written notice of its objection, if any, to any proposed amendment or action outlined above within thirty (30) days following the receipt of notice of such proposed amendment or action, the Eligible Mortgage Holder will be deemed conclusively to have approved the proposed amendment or action.



Section 20.6 First Mortgagees' Rights.

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

20.6.2 Delinquency. Eligible Mortgage Holders shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the Eligible Mortgage Holder in the payment of Assessments. In that event, the Eligible Mortgage Holder shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

**ARTICLE 21**  
**DURATION OF COVENANTS AND AMENDMENT**

Section 21.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 21.2 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners representing an aggregate ownership interest in the Common Elements of sixty-seven percent (67%) or more, subject, however, to any other provisions of this Declaration requiring the consent of a certain percentage of First Mortgagees or Eligible Mortgage Holders.

Section 21.3 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding the provisions of Section 21.2 above or any other provision of this Declaration, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act, including, without limitation, amendments to conform this Declaration or the Map to the requirements of the Act.

Section 21.4 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon recording in the office of the Clerk and Recorder of Eagle County, Colorado, a copy of the amendment, executed and acknowledged by the appropriate number of Owners (and by First Mortgagees and/or Eligible Mortgage Holders, as required), accompanied by a certificate of a licensed title insurance company as to ownership, or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Association stating that the required number of consents of Owners (and First Mortgagees and/or Eligible Mortgage Holders, as applicable) and a certificate of a licensed title company as to title to the Units were obtained and are on file in the office of the Association.



**ARTICLE 22**  
**DECLARANT'S RIGHTS REGARDING TRANSFER**

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the office of the Clerk and Recorder of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

**ARTICLE 23**  
**MISCELLANEOUS**

Section 23.1 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.

Section 23.2 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Documents shall be through any proceedings at law or in equity brought by any aggrieved Owner, the Association, or Declarant against the Association or any Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

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

Section 23.4 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect.

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

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







JOINDER OF LIENOR

The undersigned, beneficiary under the Deed of Trust dated September 1, 1998, and recorded September 21, 1998, at Reception No. 670184 in the office of the Clerk and Recorder of Eagle County, Colorado, as amended and supplemented from time to time (the "Deed of Trust"), for itself and its successors and assigns, approves the foregoing Declaration for 1st & Main; affecting the property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by that Declaration.

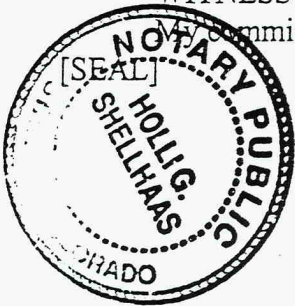
FIRSTBANK OF AVON

By: [Signature]  
Title: President

STATE OF COLORADO )  
COUNTY OF Eagle ) ss.

The foregoing instrument was acknowledged before me this 30<sup>TH</sup> day of September 1999, by Terry L. Halverson as President of FirstBank of Avon.

WITNESS my hand and official seal.  
My commission expires 07-08-02



[Signature]  
Notary Public



711595 10/12/1999 02:15P 134 Sara Fisher  
57 of 63 R 315.00 D 0.00 N 0.00 Eagle CO

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All property subject to that certain Condominium Map, 1st & Main Building Condominiums, Lot 4, Riverwalk at Edwards, Phase 4, recorded 10/12/99, 1999, at Reception No. 711596, County of Eagle, State of Colorado.



711595 10/12/1999 02:15P 134 Sara Fisher  
58 of 63 R 315.00 D 0.00 N 0.00 Eagle CO



## EXHIBIT B

### OWNERS' INTERESTS IN COMMON ELEMENTS

In order to establish the allocation of undivided ownership interests in the Common Elements appurtenant to a Unit and the allocation of General Assessments levied against such Unit, the following formula is used:

(a) The Residential Unit are allocated thirty-three and one-third percent (33.33%) of the undivided ownership interests in the Common Elements and shall be responsible for thirty-three and one-third percent (33.33%) of the General Assessments. Such thirty-three and one-third percent (33.33%) allocation is further allocated among the Residential Units on the basis of a Residential Unit's square footage as a percentage of the total square footage of all Residential Units, as shown below.

(b) The Commercial Units are allocated sixty-six and two-thirds percent (66.67%) of the undivided ownership interests in the Common Elements and shall be responsible for sixty-six and two-thirds percent (66.67%) of the General Assessments. Such sixty-six and two-thirds percent (66.67%) allocation is further allocated among the Commercial Units on the basis of a Commercial Unit's square footage as a percentage of the total square footage of all Commercial Units, as shown below.

<u>Unit No.</u>	<u>% Interest in Common Elements</u>	<u>% of Commercial Unit Space</u>	<u>% of Residential Unit Space</u>
E101	5.8313%	8.4395%	
E102	3.8680%	5.5980%	
E103	2.6308%	3.8074%	
E104	3.3401%	4.8341%	
E105	0.1145%	0.1657%	
E201	2.4967%	3.6134%	
E202	2.4185%	3.5003%	
E203	2.5470%	3.6862%	
E204	2.4381%	3.5286%	
E205	2.4437%	3.5366%	
E206	2.1365%	3.0920%	
W101	6.5937%	9.5429%	
W102A	1.9047%	2.7566%	
W102B	2.0946%	3.0314%	
W103	2.0946%	3.0314%	
W104	2.1700%	3.1405%	
W105	2.5442%	3.6821%	
W106	3.1111%	4.5026%	
W201	2.5135%	3.6377%	
W202	3.6306%	5.2544%	

B-1



711595 10/12/1999 02:15P 134 Sara Fisher  
59 of 63 R 315.00 D 0.00 N 0.00 Eagle CO

<u>Unit No.</u>	<u>% Interest in Common Elements</u>	<u>% of Commercial Unit Space</u>	<u>% of Residential Unit Space</u>
W203	2.5526%	3.6943%	
W204	2.4185%	3.5003%	
W205	2.5693%	3.7185%	
W206	2.1420%	3.1001%	
W207	2.4911%	3.6054%	
301	2.2314%		7.2203%
302	2.2007%		7.1209%
303	2.2007%		7.1209%
304	2.2119%		7.1571%
305	2.2091%		7.1480%
306	2.2063%		7.1390%
307	2.1951%		7.1028%
308	2.2314%		7.2203%
309	2.2007%		7.1209%
310	2.2342%		7.2294%
311	2.1923%		7.0938%
312	2.1951%		7.1028%
313	2.1839%		7.0667%
314	<u>2.2119%</u>		<u>7.1571%</u>
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

The Owners acknowledge and agree that square footage can be calculated by a variety of methods and agree that the calculation of the percentage interests as set forth above shall be considered final and not subject to challenge based upon different square footage calculations.

  
 711595 10/12/1999 02:15P 134 Sara Fisher  
 60 of 63 R 315.00 D 0.00 N 0.00 Eagle CO



## EXHIBIT C

### RECORDING DATA FOR EASEMENTS, LICENSES AND OTHER TITLE MATTERS

The recording data for the recorded easements and licenses appurtenant to, or included in, the Property and or to which the Property is or may become subject, are as follows:

1. Reservations and exceptions in Patents, or Acts authorizing the issuance thereof, including the reservation of the right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in United States Patent recorded August 20, 1934 in Book 48 at Page 436 and in Patent recorded December 13, 1898.
2. A one-eighth interest in all minerals extracted from subject property as reserved by Esther L. Klatt, in Deed, dated August 16, 1971, and recorded August 18, 1971 in Book 221 at Page 407 as Reception No. 117088.
3. Right of Way of unspecified location and dimensions to construct, operate and maintain lines of telephone and telegraph, including the necessary poles, cables, wires and fixtures upon and across the subject property, with the right to permit the attachment of the wires of any other company, as granted to The Mountain States Telephone and Telegraph Company by right of way deed recorded September 9, 1930 in Book 106 at Page 599, insofar as same may affect subject property.
4. An easement of unspecified location and dimensions to relocate powerline due to construction of Interstate Highway No. 70 and to construct, operate and maintain an electric transmission or distribution line or system, etc., as granted to Holy Cross Electric Association, in the instrument recorded August 19, 1969, in Book 215 at Page 808 as Reception No. 111318 and in Book 248 at Page 378 as Reception No. 144622, insofar as same may affect subject property.
5. Right of Way Easement granted to Holy Cross Electric Association, Inc., as contained in the instrument recorded June 10, 1985 in Book 416 at Page 740 as Reception No. 313013.
6. Right of Way and Easement granted to Rocky Mountain Natural Gas Company, as contained in the instrument recorded September 6, 1989 in Book 512 at Page 994 as Reception No. 409171.
7. Terms, conditions, reservations, restrictions and obligations as contained in The Riverwalk at Edwards Design Review Regulations and Processes, recorded February 25, 1994 in Book 633 at Page 474 as Reception No. 529530.



8. Underground Right of Way Easement granted to Holy Cross Electric Association, Inc., as contained in the instrument recorded June 8, 1994 in Book 642 at Page 345 as Reception No. 538392.

9. Terms, conditions, reservations, restrictions and obligations as contained in Trench, Conduit and Vault Agreement by and between 4020 Land Investors, a Partnership and Holy Cross Electric Association, Inc., recorded June 9, 1994 in Book 642 at Page 376 as Reception No. 538423.

10. Terms, conditions, reservations, restrictions and obligations as contained in Declaration of Covenants, Conditions and Restrictions For The Riverwalk At Edwards Property Owners Association, Inc. recorded April 17, 1995 in Book 665 at Page 400 as Reception No. 561424.

11. Board of County Commissioners, County of Eagle, State of Colorado, Resolution No. 93-145, recorded November 30, 1993 in Book 626 at Page 192 as Reception No. 522255, and Resolution No. 95-19, recorded February 17, 1995 in Book 661 at Page 668 as Reception No. 557696.

12. Terms, conditions, reservations, restrictions and obligations as contained in The Riverwalk At Edwards Planned Unit Development Control Document, recorded February 17, 1995 in Book 661 at Page 669 as Reception No. 557697.

13. Terms, conditions, reservations, restrictions and obligations as contained in Subdivision and Off-Site Improvements Agreement recorded March 3, 1994 in Book 633 at Page 986 as Reception No. 530042.

14. Resolution No. 95-134 by County of Eagle, State of Colorado, Approval of Amendment of The Riverwalk At Edwards Planned Unit Development, and the Planned Unit Development, contained therein, recorded November 15, 1995 in Book 680 at Page 977 as Reception No. 576986.

15. Right of Way Easement conveyed to Rocky Mountain Natural Gas Company, as contained in the instrument recorded December 6, 1995 in Book 682 at Page 804 as Reception No. 578811.

16. Easements, restrictions and rights-of-ways as shown on the plats of Riverwalk At Edwards, Riverwalk At Edwards, Phase 2 and Riverwalk At Edwards, Phase 3.

17. Underground right-of-way easement granted to Holy Cross Electric Association, by Summit Habitats, Inc., as contained in the instrument recorded February 21, 1996 in Book 688 at Page 421 as Reception No. 584422.





18. Terms, conditions, reservations, restrictions and obligations as contained in Trench, Conduit and Vault Agreement, by and between Summit Habitats, Inc. and Holy Cross Electric Association, recorded February 27, 1996 in Book 688 at Page 732 as Reception No. 584733.

19. Easements, restrictions and rights-of-ways as shown on the plat of Riverwalk at Edwards, Phase 4, recorded May 14, 1996 in Book 694 at Page 504 as Reception No. 590499.

20. Terms, conditions, reservations, restrictions and obligations as contained in the Declaration for River Centre recorded October 23, 1996 in Book 709 at Page 353 as Reception No. 605333.

21. Dedication of Easement by River Centre Development LLC and Eagle II Developers Inc. for pedestrian ingress and egress to and from the Eagle River, recorded October 28, 1997 in Book 741 at Page 650 as Reception No. 637599.

