

**CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS**

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**CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION is made by Lake Modern, Inc., a Colorado corporation, with an address of 701 East Valley Road, Suite 201, Basalt, Colorado 81621 (“Declarant”).

**ARTICLE I
STATEMENT OF PURPOSE AND DECLARATION**

Section 1.01 Purpose.

Declarant is the owner of the real property located in Eagle County, Colorado, described in Exhibit A (the “Property”). The purpose of this Declaration is to create a condominium on the Property pursuant to the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, et seq., as it may be amended from time to time (the “Act”), which shall be known as “Lake Modern Condominiums”. Declarant intends to further its development of the community pursuant to the development rights reserved in this Declaration, and to otherwise protect and enhance property values in accordance with the terms and provisions of this Declaration and the Act.

Section 1.02 Submission of Property.

Declarant hereby submits the Property, and such additional real property as may be subsequently added pursuant to the expansion rights reserved in this Declaration, together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon, to the provisions of the Act, and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act effective on the date of this Declaration shall remain applicable.

Section 1.03 The Development Plan.

The Property initially submitted to this Declaration shall consist of one Lot upon which a Building containing 14 separately owned Units shall be constructed. The Property together with any additional property subsequently annexed and submitted to this Declaration may be subdivided and developed in phases by the filing of successive maps or plats depicting the additional Lots, Units and the appurtenant Common Elements created. Upon completion, the Community will consist of a maximum of 155 Units. The identification number of each Lot and each Unit is shown on the Map recorded as a part of this Declaration in the Eagle County, Colorado real property records (the “Map”).

Section 1.04 Imposition of Covenants.

In furtherance of the purpose and development plan set forth above, Declarant declares that upon recording this Declaration, the Property shall constitute a condominium, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements. These covenants shall run with the Property and will inure to the benefit of and are binding upon all persons having any right, title or interest in all or any part of the Property, including Declarant, the

Association, the Owners, and their heirs, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any Person.

Additionally, the Community is subject to the Sopris Meadows PUD Declaration of Covenants, Conditions and Restrictions (Multi-Family Parcels) recorded in Book 744, at Page 544 as Reception No. 640490 of the Records (the "Master Declaration"), which is incorporated herein by this reference.

ARTICLE II **DEFINITIONS**

The following terms shall have the following meanings when used herein:

Section 2.01 "Act" means the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as it may be amended from time to time.

Section 2.02 "Agencies" means and collectively refers to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Department of Housing and Urban Development ("HUD"), the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA") or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

Section 2.03 "Allocated Interests" means the undivided interests in the Common Elements, the votes in the Association, and the percentage of the Common Expense liability allocated to each Unit as set forth in *Exhibit B*.

Section 2.04 "Articles" means the Articles of Incorporation of Lake Modern Condominium Association on file with the Colorado Secretary of State, and any amendments which may be made.

Section 2.05 "Assessments" means all the assessments for Common Expenses levied by the Association against a Unit or its Owner pursuant to this Declaration or the Act.

Section 2.06 "Association" means and refers to Lake Modern Condominium Association, Inc., a Colorado nonprofit corporation, and any successor entity by whatever name, charged with the duties and obligations of administering the Community.

Section 2.07 "Association Documents" means this Declaration, the Map, the Articles and the Bylaws of the Association, any policies, procedures, rules, or regulations or policies adopted by the Association, and any amendments or supplements to any of the foregoing.

Section 2.08 "Basalt Code" means all the laws of the Town of Basalt including without limitation Town ordinances, together with rules, regulations and other governmental requirements adopted pursuant thereto.

Section 2.09 “Building” means a building (including all fixtures and improvements contained within it) constructed within a Lot, and containing one or more Units.

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

Section 2.11 “Common Element” means and includes all the Property, except the independently owned Units, including the General Common Elements and the Limited Common Elements. Without limiting the generality of the forgoing, the Common Elements include the following components:

a. The Property and the Building including, without limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, the exterior surfaces of the Building, chimneys, chimney chases, roofs, patios, balconies, 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 some or all of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith;

b. The sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, parking areas, and related facilities upon the Property; and

c. All other parts of the Community designated by Declarant as Common Elements and existing for the use of one or more of the Owners.

Section 2.12 “Common Expense” means:

a. any and all of the Association’s costs, expenses and liabilities including, without limitation, costs, expenses and liabilities incurred for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Elements; (B) providing facilities, services and other benefits to Owners and their Guests; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created in the Association Documents, (D) levying, collecting and enforcing the Assessments; (E) regulating and managing the Community; (F) operating the Association; (G) utilities not separately metered and billed directly to Unit Owners;

b. fees assessed by the Mid Valley Metropolitan District for the raw water irrigation of the lawns, grounds and landscaped areas of the Common Elements.

c. other expenses declared to be Common Expenses pursuant to the Association Documents or the Act, and expenses agreed upon as Common Expenses by the Association; and

d. reserves for any such costs, expenses and liability.

Section 2.13 “Community” means the common interest community subject to this Declaration, consisting of the Property, the Common Elements, the Units and any other improvements constructed on the Property.

Section 2.14 “Declarant” means Lake Modern, Inc., a Colorado corporation, and its successors and assigns.

Section 2.15 “Declarant Control Period” means the period of time described in Section 5.05, subject to the limitations set forth in this Declaration or in the Act.

Section 2.16 “Declaration” means and refers to this Condominium Declaration for Lake Modern Condominiums, as amended or as supplemented.

Section 2.17 “Development Rights” means those development rights and special declarant rights reserved by the Declarant in Article VII.

Section 2.18 “Design Review Board” means the Lake Modern Design Review Board.

Section 2.19 “Director” means a member of the Executive Board

Section 2.20 “Executive Board” means the Association’s governing body elected to perform the Association’s obligations relative to the operation, maintenance, and management of the Property.

Section 2.21 “Expansion Property” means the real estate described in Exhibit C and identified on the Plat as “Expansion Property”, which may be converted into additional Parcels, Lots, Units, or Common Elements

Section 2.22 “First Mortgage” means any Deed of Trust or Mortgage which has priority over all other security interests in any Unit.

Section 2.23 “First Mortgagee” means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.24 “Guest” means an Owner’s family members, tenants, invitees, licensees, employees, contractors or agents.

Section 2.25 “General Common Element” means all of the Property, other than (i) those portions of the Property that are designated by the Act, by this Declaration or by the Map as Units or Limited Common Elements; and (ii) those Improvements, fixtures and equipment that are owned by a third party, such as a utility or service provider, and are located on the Property pursuant to an easement, license or any other agreement, whether written or oral.

Section 2.26 “Improvement” means any construction, structure, equipment, fixture or facilities existing, or to be constructed, on the Property that is include in the Community including, without limitation, the Buildings, walkways, sidewalks, parking areas, loading areas, driveways, landscaping, sprinkler systems, and utility installation improvements including without limitation, utility conduits, wires, pipes, and light poles.

Section 2.27 “Limited Common Element” means those portions of the Common Elements allocated by the Declaration, the Map, or by operation of C.R.S. § 38-33.3-202(1)(b) and (d), for

the use of one or more but fewer than all of the Units. Except as otherwise provided, if a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside a Unit's designated boundaries, the portion serving only that Unit is a Limited Common Element allocated solely to that Unit, the use of which is limited to that Unit, but any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements. Any awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and exterior doors and windows, or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to that Unit and their use is limited to that Unit. Exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. Without limiting the foregoing, the Limited Common Elements shall include: stoops, steps, and walls above door openings at the entrances to the Building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access; utility areas, the use of which is limited to the Unit or Units as shown on the Map; storage spaces outside of and allocated to any Unit; and parking spaces outside of and allocated to any Unit.

Section 2.28 "Manager" means that person or entity retained by the Executive Board to manage the business affairs of the Association.

Section 2.29 "Map" means the Map of Lake Modern Condominiums, Filing No. 1, recorded in Eagle County, Colorado, as amended or supplemented.

Section 2.30 "Master Covenants" means the Sopris Meadows PUD Declaration of Covenants, Conditions and Restrictions (Multi-Family Parcels) recorded in Eagle County at Reception No. 640490.

Section 2.31 "Member" means a Person holding a membership in the Association.

Section 2.32 "Mortgage" means and refers to any Mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

Section 2.33 "Mortgagee" means and refers to any person or entity named as a Mortgagee or beneficiary under any deed of trust or Mortgage under which the interest of any Owner is encumbered.

Section 2.34 "Owner" means Declarant and any subsequent record owner, whether one or more Persons, of a fee simple title interest to any Unit. Owner does not include a Person having only a security interest or any other interest in a Unit solely as security for an obligation.

Section 2.35 "Parking Space" means those Limited Common Elements designated for parking associated with a particular Unit as specifically designated on the Map of any Filing, and those General Common Elements designated for parking for the use and benefit of the Community and not associated with a particular Unit as specifically designated on the Map of any Filing.

Section 2.36 "Person" means an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

Section 2.37 "Property" means and includes the Initial Parcel and any additional real property subsequently submitted to this Declaration, together with all easements, rights, and appurtenances thereto and the Buildings and Improvements erected or to be erected thereon.

Section 2.38 "Storage Space" means and includes only those Limited Common Element storage spaces which are specifically designated as a Storage Space on the Map for use associated with a particular Unit.

Section 2.40 "Successor Declarant" means any Person to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an instrument recorded in Eagle County, Colorado, designating such Person as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Section 2.41 "Supplemental Declaration" means a recorded instrument that subjects additional property to this Declaration or imposes additional restrictions and obligation on the land described in such instrument.

Section 2.42 "Unit" means the physical portion of the Property designated for separate ownership or occupancy. Each Unit is depicted on the Map, described and defined as follows:

a. Upper Horizontal Boundary. The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling, bearing structure surfaces, beams, and rafters and of closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries.

b. Lower Horizontal Boundary. The horizontal plane or planes of the unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills, and structural components.

c. Vertical Perimeter Boundaries. The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the unfinished surfaces of the interior trim, fireplaces, and thresholds along perimeter walls and floors; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions. Each Unit will include the spaces and Improvements lying within the boundaries described in (a), (b) and (c) above, and will also include the spaces and the Improvements within those boundaries containing any space heating, water heating, or air conditioning apparatus; electrical, telephone, television, cable, broadband, or networking receptacles, switches, wiring, pipes, ducts, or conduits; smoke detectors or sprinkler systems; or light fixtures or boxes that serve the Unit exclusively. The surface of the foregoing items will be the Unit's boundaries, whether or not those items are contiguous to the Unit.

e. Exclusions. Except when specifically included by other provisions of this Section, the following are excluded from each Unit: the spaces and Improvements lying outside the boundaries described in (a), (b) and (c) above; and all chutes, pipes, flues, ducts, wires, conduits,

and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units or Common Elements or both

ARTICLE III

PROPERTY RIGHTS AND EASEMENTS

Section 3.01 Owner's Easements.

Subject to the limitations contained in this Declaration, every Owner shall have the right to use and enjoy the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the allocation of Limited Common Elements to one or more, but less than all, of the Units, and the provisions in the Association Documents. In particular, each Owner shall have:

a. A non-exclusive access easement for reasonable pedestrian access, ingress and egress to and from their Unit over and across the parking area, all walkways, sidewalks, steps and stairways in and around the Lots, and a non-exclusive access easement for vehicular access, ingress and egress to and from the parking area.

b. A non-exclusive easement for vehicular parking in the parking area, subject to the Declarants rights to allocate any portion of the parking area for the exclusive use of one or more but less than all of the Units.

Section 3.02 Easement of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units or any Unit, to the extent of such encroachment, which easement shall exist so long as the encroachment exists. However, an easement for encroachment shall not exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Section 3.03 Utility Easements.

a. Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit A or C, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Property (but not through a structure) to the extent reasonably necessary for the purpose of: installing utilities and infrastructure to serve the Property, cable and other systems for sending and receiving data, or other electronic signals, security and similar systems walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public right-of-way or easements reserved for such purpose on recorded plats; inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in this Section; and access to read utility meters.

b. Specific Easements. Declarant reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibit A or C. The Owner of any property to be burdened by any easement granted pursuant to this subsection

(b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

c. Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on a Lot, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Section 3.04 Easements to Serve Expansion Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Elements for the purpose of enjoyment, use, access, and development of the Expansion Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Elements for construction of roads and for connecting and installing utilities on such property.

Declarant, and its successors or assigns, shall be responsible for any damage caused to the Common Elements as a result of their respective actions in connection with development of the Expansion Property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion benefiting from such easement is not made subject to this Declaration, Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance that the Association provides to or along any roadway providing access to such Property.

Section 3.05 General Maintenance and Emergency Easement.

Declarant reserves, for itself and any Successor Declarant, and the Association, an easement upon, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, including the right to enter upon any Unit.

Section 3.06 Declarant's Rights Incident to Construction.

Declarant, for itself and any Successor Declarant, reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Buildings, Common Elements, Units or any other Improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that Declarant shall not exercise such rights in a way which prohibits the occupancy, use, or access to the Community by the Owners.

Additionally, Declarant reserves the right to perform warranty work, repairs and construction work in the Units and Common Elements, and to control and have the right of access to work and make repairs until completion of the entire Community, or as may otherwise be necessary for Declarant to perform its obligations or to exercise any Development Right, whether arising under the Act or reserved in this Declaration. This easement and the reserved rights attendant thereto include the right to convey access, utility and drainage easements to the Town of Basalt and Mid Valley Metropolitan District or any other special district, governmental authority, public utility or the State of Colorado.

Section 3.07 Easement for Access.

Declarant reserves for itself, its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Declarant in connection with real estate sales activities within the Property.

Section 3.08 Dedicated or Recorded Easements.

The Property is subject to additional easements dedicated on the Map, and the existing recorded easements listed in Exhibit D.

Section 3.09 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, and a perpetual nonexclusive easement of access across, over and through the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry into a Unit shall be only after reasonable notice to the Owner and with the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

Section 3.10 Description of Units.

Every deed for the conveyance of a Unit and every other instrument affecting title to a Unit shall identify the County in which the Unit is located and may describe that Unit by the letter or number or combination thereof shown or referenced on the Map with appropriate reference to the Map and to this Declaration, as each shall appear in the Records, in the following fashion:

UNIT ____, LAKE MODERN CONDOMINIUMS PHASE 1, BEING LOCATED
IN LOT ____, SOPRIS MEADOWS TWO, FILING NO. ____, according to the
Condominium Map of Lake Modern Condominiums Phase 1, recorded as
Reception No. _____ and the Condominium Declaration recorded as
Reception No. _____ of the Eagle County, Colorado records.

Section 3.11 Allocation of Common Elements and Reallocation of Limited Common Elements.

Declarant reserves the right to designate parts of the Common Elements from time to time for use by less than all of the Units, and the right to reallocate any Limited Common Element to one or more Units. After the Declarant Control Period terminates, the Executive Board may allocate portions of the Common Elements as Limited Common Element, or reallocate Limited Common Elements between or among Units only to the extent permitted and in the manner authorized by the Act.

ARTICLE IV **MAINTENANCE AND REPAIRS**

Section 4.01 Owner Maintenance of Units and Limited Common Elements.

a. Each Owner shall, at their sole expense, maintain and keep in good condition and repair, their Unit and the appurtenant Limited Common Elements exclusively serving such Unit. However, the Association shall be responsible for maintenance or repair of any Limited Common Element for which the Association holds or is the beneficiary of a warranty or right of repair.

b. Owners shall obtain all permits and licenses necessary prior to performing any Unit or Limited Common Element maintenance, repair, replacement, or alteration, and shall comply with all Association Document provisions, and all applicable laws, rules and regulations. Notwithstanding the foregoing, no Owner shall perform any work, or take any action, that impairs a Building's structural integrity or mechanical systems, or that interferes with any easement.

c. Owners shall not repair, alter or modify the Common Elements in any way that affects the appearance, structural integrity, or the mechanical systems of any Common Element, without the Association's prior written approval.

d. Owners of Units located above the ground floor, shall remove snow or ice from the Limited Common Element deck or balcony exclusively benefitting their Unit within 24 hours after the snow or ice accumulates.

e. If an Owner fails or refuses to properly maintain or repair their Unit or the appurtenant Limited Common Elements, the Association, after 30 days prior written notice to the Owner, may enter the Unit to perform such work as is reasonably required to restore the Unit or the appurtenant Limited Common Elements to a condition of good order and repair. Any amounts that the Association incurs in performing such work shall be Common Expenses that may be levied against the Unit as a Specific Assessment.

Section 4.02 Association's Maintenance Duties

a. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements, except for those Limited Common Elements which exclusively serve one Unit. Without limiting the generality of the foregoing, the Association shall: provide lawn, grounds and landscaping care and maintenance; maintain and operate the raw water irrigation

system for the benefit of the Community; and otherwise maintain and keep in good repair and condition all sidewalks, yards, grounds, greenbelt areas, all drives, all parking lots and facilities, traffic control devices and signage, recreational equipment and all other improvements and facilities which form a part of the General Common Elements, and Limited Common Elements serving more than one Unit. The Association shall provide for snow removal from General Common Element steps, stairs, walkways, sidewalks, roadways, drives and parking lots and any of the forgoing that are Limited Common Elements serving more than one Unit. The Association shall provide for snow and ice removal from the roofs and gutters when necessary or otherwise advisable.

b. Any Common Expenses resulting from the Association's maintenance or repair of any Limited Common Element that benefits more than one Unit shall be assessed against the benefitted Units equally or in such other shares that the Board may reasonably determine.

c. The costs of the maintenance, repair and upkeep of the General Common Elements shall be a Common Expense of all the Owners. However, the Association's costs to repair damage to the Common Elements that arise from the act or omission of any Owner or Owners, or their Guests, may be assessed to the responsible Owner or Owners at the discretion of the Executive Board.

d. The costs of maintenance, repair, replacement and upkeep of the roof, foundation, access drive, facade or exterior of a Building shall be assessed only to the Owners of Units within that Building. If any Improvement serves two or more but less than all of the Buildings including, without limitation, a shared access drive, the costs of maintenance, repair and replacement of such Improvement shall be assessed only to the Owners of Units within the Buildings served by such Improvement.

Section 4.03 Maintenance Contract.

The Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Elements.

Section 4.04 Association's Right of Access.

Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property for the purpose of performing installations, alterations, or repairs and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires, and equipment; provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no request or notice is required, and the right of entry shall be immediate and with as much force as is reasonably necessary to gain entrance, whether or not the Unit Owner is present at the time.

Section 4.05 Determination of Obligation and Supervision.

The Executive Board shall determine, in its sole subjective discretion, responsibility for the performance of any maintenance, repair, lawn care, snow removal or other work, and for payment

of any resulting expense, if not expressly delineated above. If any dispute arises as to the construction or interpretation of the foregoing sections, the Board's determination with regard thereto shall be conclusive. The Association shall have the right to prescribe minimum standards with regard to an Owner's performance of any maintenance for which the Owner is responsible. The Owner shall comply with all Association proscribed guidelines and requirements, and in furtherance hereof, the Association shall have the right to require any Owner at any time to forthwith correct any repair or any maintenance deficiency then existing.

ARTICLE V

ALLOCATED INTERESTS, MEMBERSHIP, AND ASSOCIATION OPERATIONS

Section 5.01 Allocated Interests.

The share of Allocated Interests appurtenant to each Unit shall be based on the square footage of the Unit divided by the square footage of all Units as more specifically set forth in Exhibit B.

Section 5.02 Membership.

Every Unit Owner shall be a member of the Association. Each such membership shall be appurtenant to and inseparable from Unit ownership. An Owner shall not transfer, pledge or alienate their membership in the Association in any way, except upon the sale or encumbrance of their Unit and then only to the purchaser or Mortgagee of said Unit.

Section 5.03 Voting.

a. Common Vote. Except for and matters to be decided separately by one of the classes of Building Members pursuant to this Declaration, all Owners shall be entitled to vote on: (1) Executive Board elections; (2) matters that must be voted on by all Owners; and (3) matters that cannot be clearly categorized as affecting only one class of Building Members. Each Unit shall be entitled to a share of all votes in the Association, expressed as a percentage, equal to the Unit's Allocated Interest as set forth in Exhibit B.

b. Building Vote. Subject to Section 5.03(a), the Association shall have a separate membership class for each Building subjected to this Declaration. Owners of Units within a Building shall be allocated Building membership votes based on the square footage of the Owner's Unit divided by the square footage of all Units within the same Building, expressed as a percentage, as more specifically set forth in Exhibit B. Only Owners of Units within the same Building may vote as to matters concerning only that Building.

c. Additional Membership Classes. Declarant may, by Supplemental Declaration, create additional membership classes for the Owners of Units within any property made subject to this Declaration. These classes shall have rights, privileges, and obligations as specified in such Supplemental Declaration. Neither recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any person shall be required except as stated in this paragraph. After expiration of the Declarant Control Period, the

Board shall have the right to record or amend any such Supplemental Declaration upon the majority approval of all the Owners.

d. Alteration of Organizational Structure. As an alternative to creating or maintaining membership classes as provided in this Section, Declarant may, by Supplemental Declaration, create a sub-association consisting of one or more, but less than all, of the Buildings that are constructed within the Property. All Units within a Building must be members of the same sub-association. Any such sub-association so created shall have rights, privileges, and obligations as specified in such Supplemental Declaration. Neither recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any person shall be required except as stated in this paragraph.

Section 5.04 Compliance with Association Documents.

Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens and benefits of Association membership concern the land and shall be covenants running with each Unit for the benefit of all other Units.

Section 5.05 Declarant Control Period.

During the Declarant Control Period, Declarant or any successor who takes title to all or part of the Property for the purpose of development and sale of the Property and who is designated as Successor Declarant in a recorded instrument executed by Declarant, will have exclusive power to appoint and remove Directors and officers subject to the limitations in the Act. The Declarant Control Period begins the date this Declaration is first recorded in the Eagle County Clerk and Recorder's office, and will terminate the earlier occurrence of the following:

- a.** 60 days after conveyance of 75% of the Units that may be created to Owners other than Declarant;
- b.** two years after Declarant's last conveyance of a Unit in the ordinary course of business; or
- c.** two years after Declarant last exercised its right to add new Units.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and Directors before termination of Declarant Control Period, but, in that event, the Declarant may require for the duration of the Declarant Control Period, that specified Association or Board actions, as described in an instrument executed and recorded in Eagle County, be approved by the Declarant before those actions become effective.

Section 5.06 Books and Records.

The Association shall make available for inspection, upon advance request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records, and financial statements prepared pursuant to

the Bylaws. The Association may recover expenses and charge reasonable fees for copying or delivering such materials.

Section 5.07 Manager.

The Executive Board may employ a Manager and delegate certain Association powers, functions, or duties, as provided in the Bylaws. The Manager shall not have the authority to make expenditures except upon the Executive Board's prior approval and direction. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

Section 5.08 The Association's Rights and Obligations.

The Association may exercise any right or privilege expressly granted in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege under the Association Documents or reasonably necessary to affect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

Section 5.09 The Executive Board.

The Association's affairs shall be managed by an Executive Board which may by resolution delegate any portion of its authority to an Executive Committee or a Manager. There shall be no fewer than three members of the Executive Board, the specific number to be set forth from time to time in the Bylaws.

a. Powers. The Executive Board shall have power to take the following actions:

 i. Adopt and publish rules and regulations governing the use of the Common Elements, the personal conduct of Owners and their Guests within the Community, and establishing penalties, including, without limitation, the imposition of fines, for the infraction of such rules and regulations;

 ii. Suspend a Member's voting rights during any period in which such Member is in default on payment of any Assessment. Such rights may also be suspended after notice and hearing for violation of the Association Documents;

 iii. Exercise all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws or as provided by the Act; and

 iv. Assign the Association's right to future income, including the right to receive Common Expense Assessments, and its related lien rights.

b. Limitations. Pursuant to C.R.S. § 38-33.3-303(3)(a), the Executive Board may not act on the Association's behalf to amend the declaration, terminate the common interest

community, elect Directors or determine the qualifications, powers and duties, or terms of office of Directors.

Section 5.10 Indemnification of Officers, Directors and Others.

Subject to Colorado law, the Association shall indemnify every officer, Director, and committee member against all damages and expenses, including attorney fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Executive Board) to which they may be a party by reason of being or having been an officer, Director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

a. The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or Directors may also be Members).

b. The Association shall indemnify and forever hold each such officer, Director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 5.11 Master Association.

The Executive Board of the Association may delegate to a Master Association, such powers of the Association as may be permitted by the Act and as the Executive Board deems appropriate. The Executive Board of any Master Association to which powers of the Association are delegated shall be elected after the Declarant Control Period by all members of the Executive Boards of all common interest communities subject to any such Master Association.

Section 5.12 Merger or Consolidation.

The Community may be merged or consolidated with one or more other common interest communities in accordance with the Act and upon compliance with the provisions of C.R.S. § 38-33.3-221.

ARTICLE VI **ASSESSMENTS**

Section 6.01 Obligation and Purpose of Assessments.

a. Owners, by accepting a deed for a Unit, covenant to pay the Association: (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Supplemental Assessments for the purpose of providing the

additional funds required to meet unexpected increases in budgeted Common Expenses; (3) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; (4) Specific Assessments for Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element may be assessed against the Units to which such Limited Common Element is assigned, or as determined by the Executive Board; and (5) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

b. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Plat.

Section 6.02 Budget.

The Executive Board shall adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year. Within 90 days after adoption of any proposed budget, the Executive Board will provide the budget to all the Owners with notice of a date by which the budget will be deemed approved by the Owners unless a majority of all Owners vote to veto the budget at a meeting occurring on the date stated in such notice, or by written ballot. If the proposed budget is vetoed, the last approved periodic budget shall be continued until a subsequently proposed budget is not vetoed by the Owners.

Section 6.03 Reserve Fund.

The Association shall establish and maintain an adequate reserve fund for the replacement of Improvements to the Common Elements and those Limited Common Elements that the Association is obligated to maintain. This reserve fund shall be a line item in the periodic budget and shall be collected from and as part of the Periodic Assessments for Common Expenses.

Section 6.04 Working Capital Fund.

The Association or Declarant shall require each buyer of a Unit to make a non-refundable payment to the Association in an amount equal to one-quarter (1/4) of the Unit's Periodic Assessment for that year, which sum shall be segregated and held, without interest, by the Association to meet unforeseen expenditures, acquire additional services or equipment or as a maintenance reserve. A working capital fund contribution shall be collected and transferred to the Association at the time of closing of each sale, or re-sale, of each Unit, and shall be maintained for the Association's use and benefit. An Owner's contribution shall not relieve an Owner from paying Periodic Assessments as they become due. Upon the transfer of a Unit, an Owner shall not be entitled to a

credit from the transferee for any unused portion of the working capital fund. Declarant may not use any of the working capital fund to defray any of its expenses or construction costs.

Section 6.05 Periodic Assessments.

Periodic Assessments for Common Expenses shall be based upon the estimated cash requirements as the Executive Board determines, from time to time, which shall be shared by all of the Owners. The Periodic Assessments shall be due in advance, without notice on the first day of the year. Owners may pay their Periodic Assessment in monthly installments, due on the first of each month, without notice, or such other installments as the Executive Board may determine. The Association's failure to fix the Periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Periodic Assessments in excess of the actual expenses incurred in any fiscal year.

Section 6.06 Apportionment of Periodic Assessments.

The apportionment of Periodic Assessments for each Unit's appurtenant Common Expense liability is as set forth below.

a. Community Expenses. All Units shall be responsible for a share of the Common Expenses related to the administration, management, and operation of the Association and the Property, cleaning, maintenance, repair and replacement of the Common Element driveways, roadways, sidewalks, landscaping, and snow removal. Each Unit's share of such Community Expenses is equal to the Unit's Allocated Interest as set forth in Exhibit B.

b. Building Expenses. The Units within any Building shall be responsible for 100% of the "Building Expenses" of administration, operation, management, maintenance, repair or replacement of the Common Elements located within that Building including, without limitation, any Improvements that are exclusively used and enjoyed by Units within that Building, and expenses declared to be Building Expenses pursuant to this Declaration. The share of the Building Expenses of each Unit within a Building is calculated by dividing the approximate square footage of such Unit by the total approximate square footage of all Units within that Building.

c. Supplemental Assessments. If the Executive Board determines that the amount of the Periodic Assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations, one or more supplemental assessments may be made to provide the additional funds. In which case, the Executive Board shall follow the requirements of Section 6.02 to adopt and ratify the revised budget. Upon request, the Executive Board will deliver the revised budget summary to any Mortgagee. The Executive Board may levy supplemental assessments for such fiscal year against each Unit based on the revised budget.

Section 6.07 Specific Assessments.

Common Expenses for maintenance, repair or replacement of a Limited Common Element benefitting one or more, but less than all, of the Units may be assessed against the Unit(s) to which such Limited Common Element is assigned, or against the affected Unit(s) as determined by the Executive Board. Without limiting the generality of the forgoing, specific assessments that may be levied against a Unit include any extraordinary insurance cost incurred as a result of the value of a particular Owner's Unit, or any extraordinary Common Expense that the Association incurs as a result of the acts or omissions of any Owner, or their Guest.

Section 6.08 Special Assessments.

In any fiscal year, the Association may levy one or more Special Assessments payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense but shall be construed to prescribe the manner of assessing expenses authorized in this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Owners as provided in this Article. Written notice of the Special Assessment amount and payment schedule shall be given promptly to the Owners, and no payment shall be due less than 30 days after the date of such notice.

Section 6.09 Default Assessments.

All monetary fines levied against a Unit for violation of the Association Documents together with any expenses the Association incurs to enforce a violation, shall be a Default Assessment. Notice of the amount and due date of such Default Assessment shall be sent to the Owner of the Unit subject to such Assessment at least thirty (30) days prior to that due date. Default Assessment shall be a lien against such Owner's Unit which may be collected as a Common Expense as provided in this Declaration and in accordance with the Act.

Section 6.10 Commencement of Assessments.

Assessments shall begin on the first day of the month following the first conveyance of a Unit to an Owner other than the Declarant occurs. Assessments shall be levied against all Units that are subject to this Declaration and payable by the Owners of all Units, including Units still owned by Declarant that are subject to this Declaration. Declarant shall be responsible for all Common Expenses until Assessments commence.

Section 6.11 Assessment Lien.

a. The Association is hereby granted, and shall have, a lien on a Unit for an Assessment levied against the Unit or fines imposed against its Unit Owner. Fees, charges, late charges, attorneys' fees, fines, and interest charged pursuant to the Act and the Association Documents are enforceable as Assessments. The amount of the lien shall include all those items

set forth in this Section from the time such items become due. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

b. A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded prior to the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the Common Expense Assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in subpart (2) of this subsection to the extent that the Common Expense Assessments (not including fees, charges, late charges, attorneys' fees, fines, and interest pursuant to C.R.S. §§ 38-33.3-302(1)(j), (k), and (l), C.R.S. § 38-33.3-313(6), C.R.S. § 38-33.3-315(2), are based on the budget adopted pursuant to this Declaration and would have become due in the absence of acceleration, during the six months immediately preceding an action or a non-judicial foreclosure either to enforce or extinguish either the Association's lien or a Security Interest described in subpart (2) of this subsection. The Assessment lien shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. Transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

c. Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a statement or claim of lien is not required.

d. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party, which shall be additional Assessments, and enforceable by execution under Colorado law.

e. The Association's lien may be foreclosed by the same judicial procedure by which a mortgage on real estate is foreclosed under Colorado law.

f. In any action by the Association to collect Assessments or to foreclose a lien for Assessments, the court may appoint a receiver for the Unit who shall collect all sums due from that Unit Owner or a tenant of the Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Assessments levied against the Unit based on a budget adopted pursuant to this Declaration.

Section 6.12 Effect of Nonpayment.

a. Any Assessment, or an installment thereof, shall be delinquent if not paid within 30 days of its due date. If an Assessment, or installment, becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

i. Assess a late charge for each delinquency in such amount as the Executive Board may determine.

ii. Assess interest on the delinquent amount at a rate the Executive Board determines is appropriate, but not to exceed such rate permitted by state statute or 21% per annum, whichever is lower (Default Rate), accruing from the due date until paid in full;

iii. Suspend the Owner's voting rights or the right to use any Common Element during any period of delinquency;

iv. Accelerate any portion or all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be immediately due and payable;

v. Disconnect any utility services to the Unit that are paid as a Common Expense;

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

vii. File a statement of lien with respect to the Unit and proceed with foreclosure as set forth below.

b. Upon payment of delinquent Assessments, the Association may forego any collections remedies, decelerate any Assessment installments that were accelerated and restore any rights to the previously delinquent Owner.

Section 6.13 Successor's Liability for Assessment.

In addition to each Owner's personal obligation to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to ownership of a Unit, except as otherwise provide in this Article, shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Unit without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. The successor's liability shall not be personal and shall terminate upon termination of such successor's ownership of the Unit. In addition, the successor shall be entitled to rely on the Association's statement of status of assessments as set forth below.

Section 6.14 Notice to Mortgagee.

The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than 60 days after the same shall have become due, if such Mortgagee has furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 6.15 Statement of Assessments.

The Association shall furnish to an Owner, their designee, or to a holder of a security interest upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. A reasonable fee, established by the Executive Board, may be charged for furnishing such statement if permitted under applicable law.

ARTICLE VII **DECLARANT'S RESERVED DEVELOPMENT RIGHTS**

Section 7.01 Expansion Rights.

Declarant expressly reserves the right to use all or any part of the Expansion Property to develop additional Units, Common Elements and Limited Common Elements. Declarant may exercise such rights on all or any portion of the Expansion Property in whatever order of development Declarant, in its sole discretion, determines. The existing Owners or Mortgagees' consent is not required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

a. Declarant makes no assurances as to the boundaries of the portions of the Expansion Property that will be added at any time or the order that such portions will be added. Furthermore, Declarant has no obligation to subject all or any portion of the Expansion Property to the provisions of this Declaration.

b. Exercise of this Development Right with respect to any portion of the Expansion Property shall not obligate the Declarant to exercise such Development Right in any other portion of the Expansion Property. Any portion of the Expansion Property that is not subjected to this Declaration may be developed as Declarant or any subsequent owner of such portions may determine.

c. The addition of any Expansion Property to the Community shall be achieved by recording with the Eagle County Clerk and Recorder a Supplemental Declaration, or Supplemental Plat containing a legal description of the real estate to be added to the Community and such other terms and provisions as Declarant may prescribe.

Section 7.02 Reservation of Withdrawal Rights.

Declarant reserves the right to withdraw Declarant owned real estate from the Community and the provisions of this Declaration. If real estate is withdrawn from the Property ("Withdrawn Property"):

a. Owners of real estate within the Property or the Withdrawn Property will have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Property and Withdrawn Property.

b. Declarant will prepare and record in the Eagle County Clerk and Recorder's office whatever documents are necessary to evidence such easements and will amend the Plat to include

reference to the recorded easement(s). Declarant's preparation and recordation of an easement pursuant to this Section will conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 7.03 Additional Development Rights Reserved.

In addition to any rights reserved elsewhere in this Declaration, Declarant reserves the following Development Rights:

- a.** The right to create Units, Common Elements and Limited Common Elements within the Community;
- b.** The right to develop the Community in phases including, without limitation, the right to construct the Buildings, Units, Common Elements and all other Improvements in phases;
- c.** The right to establish or change the Building envelopes with the approval of the Town of Basalt
- d.** The right to reconfigure all or any of the Units, and construct and complete the Units as reconfigured, together with the Common Elements and Limited Common Elements, provided that the Declarant shall have no right to reconfigure a Unit the Declarant does not own;
- e.** The right to use so much of the Common Elements as it may deem necessary or convenient for the purpose of the construction and development of the Buildings, and other Improvements on the Property or the Expansion Property;
- f.** The right to prepare, execute and record one or more Amendments or Supplements to this Declaration, assigning or reassigning identifying numbers to each Unit created and describing the Common Elements and any Limited Common Elements thereby changed or created, and in the case of Limited Common Elements, designating the Unit or Units to which such Limited Common Elements are allocated, and to prepare, execute and record therewith, an additional, supplemental or amended Map depicting and addressing the matters required by the Act or deemed proper by the Declarant in connection with any such amendment;
- g.** To assign or reassign parking spaces within the Common Elements, which are not designated Limited Common Elements on a Map, without discriminating among the Units;
- h.** To exercise those development rights extended with respect to the Property by virtue of the Amended Annexation Agreement recorded as Reception No. 585757, the First Addendum to Amended Annexation Agreement recorded as Reception No. 595886 and the Second Addendum to Amended Annexation Agreement, recorded as Reception No. 763050 of the Records;
- i.** The right to combine two or more contiguous Units into one Unit and reallocate the Allocated Interests attributable to the resulting Unit, together with the right to reconstruct and complete the resulting Unit and Common Elements as so reconfigured;

j. The right to subdivide and successively subdivide and convert a Unit previously created into additional Units, Common Elements or both and to reallocate all of the Allocated Interests of the Unit among the Units created by the subdivision, together with the right to construct and complete the additional Units and Common Elements created, in any sequence and order that the Declarant shall determine;

k. The right to reallocate the Common Elements, including any Limited Common Element designated as appurtenant to a Unit or Units owned by the Declarant;

l. The right to designate Common Elements as Limited Common Elements for the exclusive use of less than all of the Unit Owners for purposes including, but not limited to, providing exclusive amenities, design elements, and community spaces for the Owners of Units within a one or more but less than all of Buildings; and

m. The right to subject any portion of the Property to additional covenants, conditions, easements, or restrictions including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If someone other than Declarant owns the property, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Section 7.04 Exercise of Development Rights.

Declarant shall exercise its Development Rights by recording with the Eagle County Clerk and Recorder an amended or Supplemental Declaration, amended or Supplemental Plat, or any other Declaration or Plat amendments or supplements that may be appropriate. Such documents shall include, without limitation, the information required to properly exercise the Development Rights reserved in this Article, and any other provisions or information permitted or required under the Act.

Section 7.05 Interpretation.

Recording of Declaration and Plat amendments or supplements with the Eagle County Clerk and Recorder shall:

a. Automatically vest in each existing Owner any additional rights or interest appurtenant to their Lot; and

b. Automatically vest in each existing Mortgagee a perfected security interest in the additional rights or interest appurtenant to the encumbered Lot.

c. Properly amend the Allocated Interests as necessary to preserve the share ratios established in this Declaration.

d. Apply the definitions used in this Declaration to the Property as it exists after Declarant's exercise of a Development Right. All Lot conveyances after such amendment or supplement will be effective to transfer rights in the Common Elements and Limited Common Elements as improved, regardless of reference to any Declaration or Plat amendment or supplement. Reference to the Declaration and Plat in any instrument will include all Declaration and Plat amendments or supplements without specific reference thereto.

Section 7.06 Special Declarant Rights.

Declarant reserves the right to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

a. Completion of Improvements. The right to construct and complete the Units, Common Elements, and any other Improvements shown on the Map and any additional Units, Common Elements, or Improvements that may be added and platted, in any sequence and order that the Declarant shall determine.

b. Exercise of Development Rights. The right to exercise any Development Right reserved in this Declaration. The fact that Declarant may exercise one or more Development Rights or Special Declarant Rights on one portion of the Property will not operate to require Declarant to exercise any such right with respect to any other portion of the Property.

c. Sales Management and Marketing. The right to maintain sales offices, management offices, signs advertising the Community and models. The offices, model Unit and signs will be of sizes and styles determined by Declarant, and may be relocated by Declarant from time to time. At all times, the offices, model Unit and signs will remain the property of Declarant and may be removed from the Property by Declarant at any time.

d. Construction Easements. The right to use easements through the Common Elements for the purpose of making Improvements within the Property.

e. Merger. The right to subject the Property or the Expansion Property to one or more common interest communities, the right to annex any such common interest community into the Association, and the right to merge or consolidate the Community with another project.

f. Control of Association and Executive Board. The right to appoint or remove any Officer or any Director during the Declarant Control Period.

g. Control of Construction, Design Review. The right to control any construction, design review, or aesthetic standards committee or process.

h. Amendment of Association Documents. The right to amend any Association Document in connection with the exercise of any Development Rights or Special Declarant Rights.

Section 7.07 Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or Improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner to discuss the Owner's concerns and conduct their own inspection.

Section 7.08 Right to Approve Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.

Section 7.09 Right to Approve Changes in Standards.

No amendment to or modification of any restrictions, rules or architectural guidelines shall be effective without the Declarant's prior written approval so long as Declarant owns property subject to this Declaration.

Section 7.10 Removal of Declarant's Property.

Declarant reserves the right to remove and retain all of its property and equipment used in the sales, management, construction and maintenance of the property whether or not the same have become fixtures.

Section 7.11 No Interference.

Neither the Association nor any Unit Owner may take any action or adopt any rule or amendment to this Declaration that will interfere with or diminish any reserved rights of the Declarant, without Declarant's prior written consent.

Section 7.12 Transfer and Termination of Declarant Rights.

a. Transfer. Any portion of the rights created or reserved under this Article for Declarant's benefit may be transferred or assigned to any Person by an instrument describing the rights transferred, signed by the transferor Declarant and the transferee, and recorded in Eagle County. These rights are appurtenant to, benefit, and burden all of the Property, and a Successor Declarant may exercise such Development Rights to the same extent as the Declarant, subject to any limitations imposed by the Declarant, this Declaration, or applicable law.

b. Termination. The rights created or reserved under this Article for Declarant's benefit shall terminate 25 years after the recording of this Declaration, unless such rights are: (i) earlier terminated by recording of Declarant's written relinquishment of such rights; or (ii) extended as allowed by law.

ARTICLE VIII

COVENANTS AND USE RESTRICTIONS

Section 8.01 Plan of Development, Applicability, Effect.

Declarant has established a general plan of development for the Property in order to protect the Owners' collective interests and the aesthetics and environment within the Community. In furtherance of that general plan, this Declaration and the Association Documents establish affirmative and negative covenants, easements, and restrictions on the Property, subject to certain rights vested in the Executive Board and the Owners to enable them to respond to changes in circumstances, conditions, needs and desires within the Community.

Section 8.02 Authority to Promulgate Use Restrictions.

Initial use restrictions applicable to the Community are set forth below. Amendment of these use restrictions requires a vote of at least 67% of the Owners. Provided, however, in accordance with the duty to exercise reasonable business judgment, the Executive Board, with the consent of the Declarant during the Declarant Control Period, may adopt rules and regulations that modify, limit, create exceptions to, or expand the initial use restrictions set forth in this Article.

Section 8.03 Owners Acknowledgment.

All Owners and Guests are given notice that use of their Unit is limited by the Association Document provisions as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected by this provision and that all restrictions upon the use and occupancy of a Unit may change from time to time.

Section 8.04 Rights of Owners.

The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

- a. Equal Treatment. Similarly situated Owners and Guests shall be treated similarly.
- b. Speech. An Owners right to display political signs and symbols in or on their Unit of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable rules and regulations regarding same.
- c. Religious and Holiday Displays. An Owners right to display religious and holiday signs, symbols, and decorations on Units of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable rules and regulations regarding same.
- d. Activities within Units. No rule shall interfere with the activities carried on within the confines of a Unit, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of

Owners or Guests, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

e. Reasonable Rights to Develop. No rule shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

f. Abridging Existing Rights. If any rule would otherwise require Owners or Guests to dispose of personal property that they owned at the time they acquired their interest in the Unit, and such ownership was in compliance with all rules and regulations in force at that time, the rule shall not apply to any such Owners or Guests without their written consent. However, all subsequent Unit Owners or Guests shall comply with such rule.

Section 8.05 Initial Use Restrictions.

The following restrictions shall apply to the Property and the Community:

a. Residential Use. Except for the Declarant's activities permitted elsewhere in this Declaration, the use of each Unit is restricted to residential purposes as defined in the Town of Basalt Code for associated underlying zone districts. No industry, business, trade, or commercial activities (other than home professional pursuits without employees, or nonresidential storage, mail, or other nonresidential use) shall be conducted, maintained, or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel, or motel purposes. Any activity that causes excessive vehicular traffic, includes material processing, finishing or parts assembly, is prohibited.

b. Leases. The term "lease," shall include any agreement for the lease or rental of a Unit and shall specifically include, without limitation, term or month-to-month rental. Owners shall have the right to lease their Unit under the following conditions:

i. All leases shall be in writing.

ii. All leases shall provide that the tenant's occupancy of the Unit is subject to the Association Documents, and that the tenant's failure to comply with the Association Documents shall be a default of the lease, which may be enforced by the Executive Board, the Owner, or both.

iii. The Association may require any Owner who leases his Lot or Unit to forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant.

iv. If a tenant fails to comply with any Association Document, the Owner and the tenant shall be jointly and severally responsible and liable to the Association; at the request of the Association, the Owner shall, at the Owner's sole cost and expense, terminate the Lease and commence eviction proceedings to evict the tenant.

v. Short-term rental activity for terms of less than 30 days is prohibited. Any advertisement for rental of a Unit must state that the minimum lease term is 30 days.

vi. Units shall not be subject to more than two leases in any calendar year.

c. Master Covenants. The Master Covenants set forth use restrictions which apply to the Property and all Parcels approved for multi-family development within the Sopris Meadows Planned Unit Development. The Master Covenants further govern the use of the Property.

d. Animals. No animals of any kind shall be raised, bred or kept on the Property, except that dogs and cats maybe kept, provided that they are not kept, bred or maintained for any commercial purpose and that such pets are at all times under the control of their Owner, well-mannered and behaved; and provided further that, in no event shall any Owner(s) or occupant(s) of any Unit keep more than a total of two (2) such animals, in any combination, at any time. Any Owner(s) or occupant(s) of a Unit harboring an animal upon the Property shall at all such times keep and maintain, in full force and effect, a homeowners insurance policy or other liability insurance coverage, with limits of not less than \$500,000.00, the covered risks of which shall include bodily injury, death and property damages caused by such animal. Notwithstanding the foregoing, the Executive Board, in its discretion, may promulgate rules, regulations and policies concerning the keeping of dogs and cats within the Community which are more restrictive than those limitations set forth above. By way of example and not by way of limitation, the Executive Board shall have the right to absolutely prohibit the keeping of dogs or cats, or to implement a plan of special pet assessment dues which shall be payable by any Owner who keeps a dog or cat upon the Property.

e. Subdivision. Units may be subdivided into two or more Units, or the boundary lines of any Unit altered, upon approval of the Board and pursuant to requirements in this Declaration and the Basalt Code.

f. Timeshare Restriction. No Unit Owner shall offer or sell any interest in their Unit under a “timesharing” or “interval ownership” plan, or any similar plan.

g. Compliance with Laws. Each Owner shall comply with all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

h. No Hazardous Use. No Owner shall dispose or allow any person under the Owner’s control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation. Furthermore, any and all uses or activities that may increase the rate of insurance for a Building, or any portion of the Property, are prohibited.

i. Nuisances. Any use, activity, or practice which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Elements or any portion of the Community, is a nuisance. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community shall be observed and may be enforced by the Association as if the same were contained in the Association Documents.

j. Alterations or Modifications. Owners are prohibited from making structural alterations to any exterior Common Elements. No structural alterations or modifications to

any Unit or any Common Element shall be made or caused to be made by any Owner without the Association's prior written approval.

k. Restrictions on Floor Loads. No Owner may place a load on any floor which exceeds the load for which the floor was designed. No Owner shall install or maintain any item of heavy furniture or equipment or make any other installation, except in a manner designed to achieve a proper distribution of weight.

l. Required Floor Coverings on Second Level. Unit floors located on the second level (second floor), or higher, of any Building, are constructed with wood and tile floor substrates located below the finished flooring materials as part of the noise mitigation assembly that must be maintained in their original condition. Additionally, two-thirds (2/3) of such floor surfaces within each such upper-level Unit must be covered by carpeting. The above described wood and tile floor substrates and carpeting shall not be removed or replaced without the Design Review Committee's prior approval. This provision is for the purpose of minimizing the transfer of sound through the floors of upper Units to Units located below and shall be strictly enforced by the Association.

m. Integrity of Noise Mitigation. Common walls between Units and floor/ceiling assemblies have been designed and constructed to meet Sound Transmission Class (STC) 55 and Impact Insulation Class (IIC) 55 standards (the "Standards") in order to mitigate noise transfer between Units. Common walls between Units and floor/ceiling assemblies have also been constructed to meet fire code requirements. No modifications to common walls or floor ceiling assemblies shall be undertaken by any Owner that compromise the sound transmission Standards. Any modification to common walls and floor ceiling assemblies shall first require obtaining the written approval of the Executive Board. Further, in order to prevent noise transfer between Units, no Owner shall install any sound producing device (e.g., speakers) in any common wall or ceiling area.

n. Excessive Bass Prohibited. No Owner shall play music nor permit any conduct or activity within a Unit that emits bass levels that can be heard or felt by a Person anywhere outside of that Unit.

o. Wall Materials. All walls in the Unit have been designed to comply with the applicable building codes and fire codes. Gypsum drywall on all of the Unit common walls has been designed and constructed to fire-rated standards. No common wall of any Unit may be modified by the Unit Owner without approval of the Executive Board after the Unit Owner presents evidence that the requested modifications will meet all applicable codes and insurance requirements.

Section 8.06 Restrictions on Parking, Vehicles and Storage.

Parking of vehicles within the Property shall be subject to rules and regulations enacted by the Executive Board and provisions of this Declaration including, but not limited to, the following:

a. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, camper, trailer, machine or equipment may take place on the Property.

b. Trailers, Campers, Recreational and Junk Vehicles. Except where the criteria set forth in C.R.S. §38-33.3-106.5 applies, no boat, camper, snowmobile, four-wheeler, not-street-legal motorcycle (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (cab or trailer), towed trailer unit, disabled, junk or abandoned vehicles, motor home, mobile home, recreational vehicle or any vehicle, the primary purpose of which is recreational, sporting or commercial use, shall be parked or stored on the Property. For purposes of this covenant, any three-quarter ton or smaller vehicle commonly known as a pickup truck, shall not be deemed a commercial vehicle or truck.

c. Use of Parking Facilities. The below-grade parking facilities shall be used for the parking of currently licensed operable vehicles only. No storage, other than vehicles, is permitted in a Parking Space. Except where the criteria set forth in C.R.S. 38-33.3-106.5 applies, no oversize vehicles (vehicles with a height in excess of ____ feet (inclusive of roof mounted racks and accessories), a width in excess of ____ feet or a length in excess of 19 feet) shall be parked or permitted within the parking facilities.

d. Use of Storage Spaces. Storage Space shall be used for the storage of non-flammable, non-hazardous supplies and other items of personal property. Storage Spaces shall not be used or converted for use as habitable space, shall not be open to the public, shall not be leased to third parties separately from the Unit, and shall not be occupied by any Person. The space shall have minimum lighting and shall be provided with no heat, no operable windows and without any floor covering. Storage Spaces shall be kept locked except when being accessed for storage purposes.

Section 8.07 Restrictions on Use of Common Elements.

Decks, patios, balconies, porches, and General and Limited Common Elements shall not be used for the storage of personal property of any kind. Nothing shall be placed on or in windows or doors or otherwise on the exterior of any Unit or on the Common Elements, which creates an unsightly appearance. Skis, snowboards, bikes, mountain bikes, kayaks and other items of personal property shall not be allowed to remain outside except when in actual use. No laundry shall be dried or hung outside.

Section 8.08 Alterations or Modifications by Owners.

a. Owners may not make any structural addition, alteration, or modification in or to the Property without the prior written consent of the Design Review Committee, in accordance with Section 8.08(b). Subject to forgoing, Owners:

i. may make alterations or modifications to the interior of their Units that do not impair the structural integrity or affect the electrical or mechanical systems or lessen the support of any portion of the Property; and

ii. may not alter or modify the appearance of the Common Elements, a Unit's exterior appearance including any portion of the Unit's interior that affects the Building's exterior appearance, or the exterior appearance of any other portion of the Property, without prior authorization.

b. An Owner may submit a written request for approval of anything prohibited under Section 8.08(a). Responses to any such written request for approval shall be made within 60 days after receipt of the request. Failure to answer the request within this time shall not constitute consent to the proposed action. Review of such requests shall be in accordance with standards and criteria established by the Design Review Committee from time to time.

c. Any applications to any department or governmental authority for a permit to make any addition, alteration, or modification in or to any Unit that affect the structural integrity, electrical or mechanical systems of the Property shall be first approved by the Association before the Owner files such application. This approval will not, however, make the Association, or any Owner, liable for any claim or damage arising from the permit on account of the addition, alteration, or modification.

d. All additions, alterations, and modifications to the Units and Common Elements shall not, except upon the Design Review Committee's prior approval, cause any increase in the Association's, or any other Owner's, insurance policy premiums.

e. In addition to a written request for approval, Owners shall submit documents and materials including, but not limited to plans, specifications, and any additional information specified in any Board adopted design review guidelines or otherwise requested. The supporting information shall be reviewed for consistency with the Building and the style and character of the Community, and in accordance with any established standards and criteria.

f. Owners shall be responsible for payment of an application fee and all of the Association's expenses resulting from the Owner's request including, but not limited to the cost of professional review, and any other costs or expenses set forth in the standards and criteria adopted by the Design Review Committee. Additionally, Owners shall be responsible for all their costs of preparing and submitting their written requests for approval and supporting materials, and all governmental permits and fees.

ARTICLE IX

WATER AMENITIES

Section 9.01 Notice.

Notice is hereby given that the Property is located near the Roaring Fork River. A lake and certain irrigation ditches exist on or near the property. There are inherent hazards and risks associated with these amenities.

Section 9.02 No Liability.

Neither the Declarant, the Association, the Town of Basalt, the Mid Valley Metropolitan District, nor any rightful owner or user of the irrigation ditches or waters that exist on or near the Property shall have any liability to any Owner, tenant or occupant of the Property in respect to bodily injury, death or property damages caused by, arising out of, or in connection with such amenities or otherwise related to such amenities or the use thereof.

Section 9.03 Prohibitions.

No Owner, Guest, nor any other Person claiming any interest in a Unit or occupying or using any Unit shall: (a) take water from, disturb or otherwise interfere with the operation of any irrigation ditch or the use of any such ditch by the rightful owners and users thereof; (b) use any ditch or the lake for swimming, tubing, boating or similar recreational activities; (c) trespass on any irrigation ditches or embankments; (d) block, obstruct or interfere with the flow of any irrigation ditch; (e) install, construct or place any planks, boards or bridges on or across any irrigation ditches or ditch embankments; or (f) claim damages or otherwise seek to hold Declarant, the Association, the Town of Basalt or Mid Valley Metropolitan District or any ditch company or rightful owner or user of the irrigation waters and ditches, responsible or liable for any damages whatsoever, to persons or property, for bodily injury, death or property damage, in any way connected with, caused by, arising out of or related to any irrigation ditch, the lake, the river, the use of those amenities for any purpose, any flooding of the irrigation ditches or river, or the proximity of the Property or any particular Unit to such amenities, whether or not foreseeable.

Section 9.04 Release.

The mere acquisition, rental or occupancy of any Unit within the Property or any portion thereof, shall signify that the provisions of this Article are accepted and ratified, and that the parties mentioned are released and absolved from any and all responsibility or liability in respect to said amenities to the full extent permitted by law. Should any claim be asserted or suit brought in violation of this Section, the party or parties against which the claim is made or suit brought, shall be entitled to recover all costs and expenses incurred in connection therewith, including reasonable attorney's fees.

ARTICLE X **INSURANCE**

Section 10.01 Authority to Purchase.

The Association shall purchase all insurance policies relating to the Common Elements. The Executive Board, the Manager, and Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. In such event, the Executive Board shall cause notice of such fact to be delivered to all Owners.

Section 10.02 Notice to Owners.

The Association, through the Executive Board, shall promptly furnish to each Owner written notice of the procurement of, subsequent change in, or termination of, insurance coverages obtained under this Article.

Section 10.03 General Insurance Provisions.

All such insurance coverage obtained by the Executive Board shall be governed by the following provisions.

a. As long as Declarant owns any Unit on which a certificate of occupancy has been issued, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage protect Declarant from (or waive any rights with respect to) warranty claims against Declarant as developer of the Community.

b. The deductible amount, if any, on any insurance policy the Executive Board purchases may be treated as a Common Expense payable from Annual Assessments or Special Assessments, or as an item to be paid from working capital reserves established by the Executive Board; or alternatively, the Executive Board may treat the expense as an assessment against an Owner whose Unit is specifically affected by the damage or whose negligence or willful act resulted in damage. The Association may enforce payment of any amount due from an individual Owner toward the deductible in the same manner as an Assessment.

c. The insurance coverage described in this Article shall be considered minimum coverage and the Association will be obligated to secure and maintain such other or additional coverage as may be required by law or C.R.S. § 38-33.3-313, which is also applicable to supplement the provisions of this Article.

d. Except as otherwise provided in this Declaration, insurance premiums for the insurance coverage provided by the Executive Board pursuant to this Article shall be a Common Expense to be paid by regular Assessments levied by the Association.

Section 10.04 Physical Damage Insurance on Improvements.

The Association shall obtain and maintain in full force and effect physical damage insurance on all Units, (excluding, unless the Executive Board directs otherwise, the fixtures, equipment, furniture, wall coverings, improvements, additions or other personal property installed by Owners) and all insurable Common Element Improvements within the Property, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, and other items normally excluded from coverage). Such insurance shall afford protection against at least the following:

a. Loss or damage caused by fire and other hazards covered by the standard extended coverage endorsement with the standard all-risk endorsement including but not limited to sprinkler leakage, debris removal, demolition, vandalism, malicious mischief, windstorm, and water damage;

b. Property damage insurance covering personal property owned by the Association.

Section 10.05 Liability Insurance.

a. The Executive Board shall obtain and maintain in full force and effect commercial general liability insurance with such limits as the Executive Board may from time to time determine, insuring the Association, each Director, the Manager, and their respective employees and agents. The liability policy will cover claims and liabilities arising out of or incident to the

ownership existence, management, operations, maintenance or use of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

b. The Executive Board shall review such limits once every two years, but in no event shall such insurance be less than \$1,000,000.00 covering all claims for bodily injury or property damage arising out of one occurrence and \$2,000,000 aggregate. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

Section 10.06 Provisions Common to Physical Damage Insurance, and Liability Insurance.

Any insurance coverage the Association obtains pursuant to this Article shall be subject to the following provisions and limitations:

a. The named insured under any such policies shall include Declarant, until all the Units have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the Association's authorized representative (including any trustee, or any successor trustee, with whom the Association may enter into an insurance trust agreement, sometimes referred to in this Declaration as the "Insurance Trustee" and such Insurance Trustee will be recognized by an insurer providing insurance pursuant to this Article) who shall have exclusive authority to negotiate losses and receive payments under such policies, and the "loss payable" clause should designate the Association or the Insurance Trustee, if any, who will act as trustee for each Owner and the holder of each Unit's Mortgage.

b. Each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

c. The insurance coverage obtained and maintained pursuant to this Article shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees;

d. The policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner or Guest when such act or neglect is not within the Association's control, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control;

e. The policies shall contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled nor may the insurer refuse to renew (including cancellation for non-payment of premium) without at least thirty (30) days' written notice to the Association, each Owner and any First Mortgagee listed as an insured in the policies; and

f. The policies shall contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Executive Board, the Association, the Manager, and any Owner or Guest; and of any defenses based upon co-insurance or upon invalidity arising from the acts of the insured.

Section 10.07 Non-Availability.

If the insurance described above is not reasonably available, or if any policy of such insurance is canceled 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, U.S. mail, to all Unit Owners.

Section 10.08 Adjustment of Property Loss.

Any loss covered by the Property Insurance described above, must be adjusted with the Association, but shall be held, administered and applied in the manner provided by the Act, C.R.S. §38-33.3-313(5) - (9).

Section 10.09 Procedures; Deductibles; Assessments.

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. Without limiting the generality of the forgoing, the Association may exclusively assess any amount incurred for payment of deductibles, or for repairing damage to the Common Elements or any Unit, that arise from the acts or omissions of any Owner(s), or their Guest(s), to such Owner(s). Additionally, the Association may exclusively assess any deductible or other repair expense incurred to the benefitted Unit Owner(s). The Executive Board shall determine the appropriate allocation amongst multiple Owners in its sole subjective discretion.

Section 10.10 Other Insurance.

The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.11 Owner's Insurance.

Each Owner may obtain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering personal property and personal liability. Additionally, an Owner may obtain such other and additional insurance coverage on their Unit as such Owner their sole discretion shall conclude to be desirable. However, no such insurance coverage shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. 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, including Declarant, should Declarant own any Unit. No Owner shall obtain separate insurance policies on the Common Elements. The Association shall be a "named insured" on all Unit Owner insurance policies for their Unit.

ARTICLE XI

MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and where applicable, necessary or proper, the provisions of this Article apply to all the Association Documents.

Section 11.01 Title Taken by Mortgagee.

Any Mortgagee holding a First Mortgage of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit is acquired.

Section 11.02 Distribution of Insurance or Condemnation Proceeds.

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

Section 11.03 Right to Pay Taxes and Charges.

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

Section 11.04 Financial Statement.

Upon written request from any Agency or Mortgagee, which has an interest or prospective interest in any Unit or the Community, the Association shall prepare and furnish within ninety days any financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

Section 11.05 Notice of Action.

Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

a. Any proposed amendment of the Association Documents effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit (excluding changes resulting from the submission of Expansion Property to the Declaration) or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit, or (iv) the purposes to

which any Unit or the Common Elements are restricted or any amendment set forth in Section 11.06 below;

- b.** Any proposed termination of the common interest community;
- c.** Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;
- d.** Any delinquency in the payment of Assessments owed by the Unit Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;
- e.** Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

Section 11.06 Amendment of Association Documents.

Approval shall first be obtained of 51% of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete any material provisions, which establish, provide for, govern or regulate any of the following:

- a.** Voting;
- b.** Assessments, Assessment liens or subordination of such liens;
- c.** Reserves for maintenance or repair and replacement of the Common Elements;
- d.** Insurance or fidelity bonds;
- e.** Responsibility for maintenance and repair of the Community;
- f.** Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;
- g.** Boundaries of any Unit;
- h.** The interests in the Common Elements;
- i.** Imposition of any restrictions on the leasing Units;
- j.** Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his Unit;
- k.** Establishment of self-management by the Association where professional management has been required by any Agency;
- l.** Any provision, which is for the express benefit of an Agency or First Mortgagees, regardless of whether the amendment is material;

- m. Hazard or fidelity insurance requirements; and
- n. Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Section 11.07 Action by Mortgagee.

If this Declaration or any Association Documents require the approval of any Agency or Mortgage then, if any Mortgagee or Agency fails to respond to any written proposal for such approval within 60 days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XII **DAMAGE OR DESTRUCTION**

Section 12.01 The Role of the Executive Board.

Except as otherwise provided in this Article, if damage to or destruction of all or part of any Common Elements, or other property covered by insurance written in the Association's name ("Association-Insured Property"), the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property.

Section 12.02 Estimate of Damages or Destruction.

As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the cost of repair and reconstruction. As used in this Article "repair and reconstruction" shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board determines to be necessary.

Section 12.03 Repair and Reconstruction.

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

Section 12.04 Funds for Repair and Reconstruction.

Proceeds received by the Association from any hazard insurance it carries shall be used to repair, replace and reconstruct the Association-Insured Property. If said proceeds are insufficient to pay

the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 12.05 Disbursement of Funds for Repair and Reconstruction.

The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. The first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.06 Decision Not to Rebuild Common Elements.

If sixty seven percent (67%) of the Owners, and all directly adversely affected Owners (as determined by the Executive Board), agree in writing not to repair and reconstruct improvements within the Common Elements and if no alternative improvements are authorized, then 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 applicable law.

ARTICLE XIII **CONDEMNATION**

Section 13.01 Rights of Owners.

If any authority having power of condemnation or eminent domain takes all or any part of the Common Elements, or whenever the Executive Board, acting as attorney-in-fact for all Owners under instruction from such authority, conveys all or any part of the Common Elements in lieu of such taking, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 13.02 Partial Condemnation, Distribution of Award; Reconstruction.

The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Elements was conveyed, and the award shall be disbursed as follows: If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within 60 days after such taking Declarant and at least four Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such

improvements are to be repaired or restored, the provisions above regarding the disbursement of funds in respect to repair of casualty damage or destruction shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees, if any, and then to the Owners, as their interests appear.

Section 13.03 Complete Condemnation.

If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 12.05 above.

ARTICLE XIV **ALTERNATIVE DISPUTE RESOLUTION**

Section 14.01 Agreement to Encourage Resolution of Disputes Without Litigation.

a. Declarant, the Association and its officers, Directors, and committee members, Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.2 in good faith effort to resolve such Claim.

b. As used in this Article, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:

- i. the interpretation, application, or enforcement of the Association Documents;
- ii. the rights, obligations and duties of any Bound Party under the Association Documents; or
- iii. the design or construction of Improvements within the Community, other than matters of aesthetic judgment, which shall not be subject to review;
- iv. any claim asserted by the Association on its own behalf, or on behalf of the Owners of two or more Units, for damages or other relief arising out of any alleged defect in the design or construction of improvements within the Community at any time while this Declaration is in force (“Construction Defect Claims”).

c. The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- i. any suit by the Association to collect assessments or other amounts due from any Owner;
- ii. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- iii. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Association Documents;
- iv. any suit in which any indispensable party is not a Bound Party; and
- v. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

Section 14.02 Dispute Resolution Procedures.

a. Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

- i. the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- ii. the legal basis of the Claim (*i.e.* the specific authority out of which the Claim arises);
- iii. the Claimant's proposed resolution or remedy; and
- iv. the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

b. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

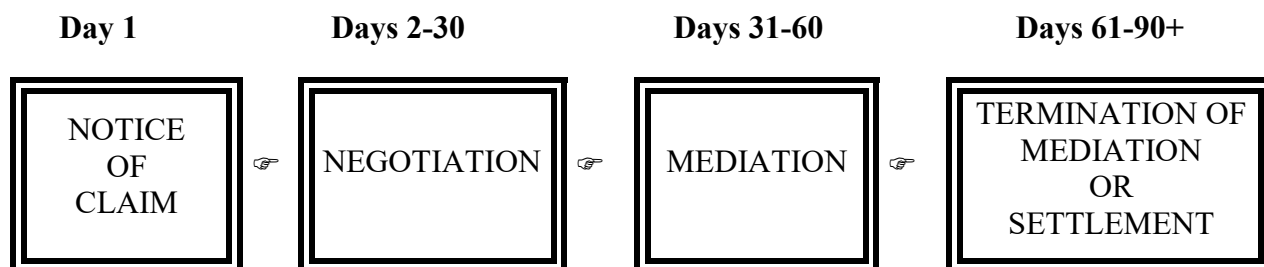
c. Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 14.2(a)(or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

i. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

ii. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

iii. Each Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

ALTERNATIVE DISPUTE RESOLUTION PROCESS



d. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

Section 14.3. Construction Defect Claims.

To the extent of any insurance proceeds realized from the Association's property insurance the Association waives its claims for damages against any contractor or subcontractor involved in the construction of the Units or the Common Elements. In addition to any requirements for initiating judicial proceedings provided in the Association Documents or the Act, the Executive Board shall not initiate a judicial proceeding with respect to a Construction Defect Claim, unless it proposes that the Association act on behalf of at least two Owners, and without first (i) distributing to all Owners a written description of the basis for the Construction Defect Claim, including a good faith estimate of the range of probable costs for legal fees and other expenses that the Association may incur in pursuing the Construction Defect Claim; and (ii) obtaining the written approval of Owners to which 100% of all of the eligible votes in the Association are allocated. In addition, the following procedures shall govern all Construction Defect Claims whether brought by the Association or by any Owner:

a. Final and Binding Arbitration of Construction Defect Claims.

i. If the parties do not agree in writing to a settlement of the Construction Defect Claim within 15 days of the Termination of Mediation, Claimant shall have 15 additional days to submit the Construction Defect Claim to arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. If not timely submitted to arbitration, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

ii. This Section 14.3 is an agreement to arbitrate and is specifically enforceable under the applicable laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this Section 14.3 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-802.5(1). The arbitration decision and the award, if any (the "Decision"), shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

b. Allocation of Costs of Resolving Construction Defect Claims. Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under C.R.S. § 38-33.3-123), from any other party. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER C.R.S. § 38-33.3-123) IN CONNECTION WITH THE ARBITRATION OF A CONSTRUCTION DEFECT CLAIM. The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Subsection 14.3(d) below.

c. Limitation on Damages. Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a Construction Defect Claim other than such its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages including, without limitation, attorneys' fees and expenses (except as specifically provided under C.R.S. § 38-33.3-123), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A UNIT AND AS A MEMBER, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER Section 14.3, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR

SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

d. Enforcement of Resolution. If any Construction Defect Claim is resolved through arbitration pursuant to Subsection 14.3(a) above, and any Bound Party thereafter fails to abide by the terms of such agreement, or if any Bound Party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Article. Notwithstanding the terms of Subsection 14.3(b) above, in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

e. Multiple Party Claims. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.

f. No Amendment; Enforcement by Declarant. The terms and provisions of this Section 14.3 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Real Estate at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 14.3 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS Section 14.3, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS Section 14.3 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING THE COMMUNITY OR ANY PORTION THEREOF, INCLUDING ANY UNIT.

g. This Section 14.3 is intended to apply to Construction Defects alleged in reference to construction of any portion of the Community under a contract in which Declarant is a party, and shall not be deemed to limit the Association in proceedings against a construction professional for Construction Defects alleged with respect to construction that takes place under a contract between the Association and a construction professional to which Declarant is not a party.

Section 14.4. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by 100% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- a. initiated during the Declarant Control Period;
- b. initiated to enforce any of the provisions of the Association Documents, including collection of Assessments and foreclosure of liens;
- c. initiated to challenge *ad valorem* taxation or condemnation proceedings;
- d. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- e. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

ARTICLE XV

DURATION OF COVENANTS AND AMENDMENT

Section 15.01 Covenants Binding.

Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii) shall, by virtue of an Owner's acceptance of any right, title or interest in any of the Property, be accepted, ratified, adopted and declared as such Owner's personal covenant and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Community; (iii) shall be a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Community; and (iv) shall run with the land.

Section 15.02 Amendment.

a. Except as otherwise specifically provided in this Declaration, any provision of this Declaration may be amended at any time by the affirmative vote or written consent, or any combination thereof, of Owners holding at least 67% of all votes in the Association. Any amendment must be executed by the President and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements set forth in that Article entitled Mortgagee's Rights shall be met, if appropriate.

b. Notwithstanding anything to the contrary contained in this Declaration:

i. The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles and Bylaws, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision without the consent of the Owners or First Mortgagees.

ii. The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles and Bylaws at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the Act, or to conform with any amendments, modifications, revisions or revocations of the Basalt Code, without the consent of the Owners or any First Mortgagees.

Section 15.03 When Modifications Permitted.

Notwithstanding any provisions in this Declaration to the contrary, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

Section 15.04 Termination.

This Community may be terminated as provided in the Act upon agreement of all Owners evidenced by a written instrument duly recorded.

ARTICLE XVI **GENERAL PROVISIONS**

Section 16.01 Notices to Owners.

Notices to Owners may be given as provided in the Act or the Colorado Nonprofit Corporation Act, C.R.S. § 7-121-402.

Section 16.02 Recording Data.

The recording data for all recorded easements and licenses appurtenant or included in the Community is set forth in Exhibit D attached. In addition, the Community will be subject to the easements and licenses granted or reserved pursuant to this Declaration and the Map.

Section 16.03 Conflicts Between Documents.

In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 16.04 Enforcement.

The failure of any Owner to comply with the provisions of the Association Documents, shall give rise to a cause of action in the Association, as well as any aggrieved Owner for the recovery of

damages or injunctive relief, or both. The failure of the Association or any Owner to enforce any such rights, shall in no event be deemed a waiver of the right to do so in the future. The substantially prevailing party to any action to enforce the Association Documents shall be entitled to have awarded to it its reasonable attorney fees and costs associated with such action.

Section 16.05 Severability.

If any clause or provision of this Declaration is determined to be illegal, invalid, or unenforceable under present or future laws, all other terms and provisions hereof shall nevertheless remain in full force and effect.

[Signature and Acknowledgement on Following Page]

IN WITNESS WHEREOF, this Condominium Declaration has been executed this ____ day of _____ 2023.

DECLARANT:

Lake Modern, Inc., a Colorado corporation

By: _____
Michael Lipkin, President

STATE OF COLORADO)
)ss
COUNTY OF EAGLE)

The forgoing instrument was acknowledged before me this ____ day of _____ 2023, by Michael Lipkin, as President of Lake Modern, Inc., a Colorado corporation.

WITNESS my hand and official seal.

Notary Public

(SEAL)

EXHIBIT A
TO THE
CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS

LEGAL DESCRIPTION

Parcel 5A, Lot 1, according to the Final Plat of Sopris Meadows Two, Filing No. 5 recorded on _____, 2023 at Reception No. _____, Eagle County, Colorado, located within Sopris Meadows PUD, according to the Plat thereof recorded July 16, 1996 at Reception No. 595887, as amended or supplemented

EXHIBIT B
TO THE
CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS

ALLOCATED INTERESTS

1. Common Votes and Community Expense are based on the square footage of a Unit divided by the square footage of all Units, expressed as the following percentages:

<u>Unit</u>	<u>SQ. FT.</u>	<u>Percentage</u>
101	2446	8.3%
103	1428	4.8%
104	2813	9.5%
105	3371	11.4%
106	1746	5.9%
107	2497	8.4%
201	2370	8.0%
202	820	2.8%
203	1448	4.9%
204	2874	9.7%
205	3440	11.6%
206	1770	6.0%
207	<u>2555</u>	<u>8.6%</u>
Totals	29578	100%

2. Building 1 Votes and Building 1 Expense are based on the square footage of a Unit within Building 1 divided by the square footage of all Units within Building 1, expressed as the following percentages:

<u>Unit</u>	<u>SQ. FT.</u>	<u>Percentage</u>
101	2446	8.3%
103	1428	4.8%
104	2813	9.5%
105	3371	11.4%
106	1746	5.9%
107	2497	8.4%
201	2370	8.0%
202	820	2.8%
203	1448	4.9%
204	2874	9.7%
205	3440	11.6%
206	1770	6.0%
207	<u>2555</u>	<u>8.6%</u>
Totals	29578	100%

EXHIBIT C
TO THE
CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS

EXPANSION PROPERTY

Parcel 5A, Lot 2, according to the Final Plat of Sopris Meadows Two, Filing No. 5 recorded on _____, 2023 at Reception No. _____, Eagle County, Colorado, located within Sopris Meadows PUD, according to the Plat thereof recorded July 16, 1996 at Reception No. 595887, as amended or supplemented

Parcel 5A, Lots AH-1 and AH-2, according to the Final Plat of Sopris Meadows Two, Filing No. 5 recorded on _____, 2023 at Reception No. _____, Eagle County, Colorado, located within Sopris Meadows PUD, according to the Plat thereof recorded July 16, 1996 at Reception No. 595887, as amended or supplemented

Parcel 5B, Lots 3, 4, 5, 6 and 7, according to the Final Plat of Sopris Meadows Two, Filing No. 5 recorded on _____, 2023 at Reception No. _____, Eagle County, Colorado, located within Sopris Meadows PUD, according to the Plat thereof recorded July 16, 1996 at Reception No. 595887, as amended or supplemented

Parcel 5C, according to the Final Plat of Sopris Meadows Two, Filing No. 5 recorded on _____, 2023 at Reception No. _____, Eagle County, Colorado, located within Sopris Meadows PUD, according to the Plat thereof recorded July 16, 1996 at Reception No. 595887, as amended or supplemented

EXHIBIT D
TO THE
CONDOMINIUM DECLARATION
FOR
LAKE MODERN CONDOMINIUMS

RECORDED ENCUMBRANCES AND EASEMENTS

1. 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 NOVEMBER 16, 1907, IN BOOK 48 AT PAGE [287](#).
2. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED NOVEMBER 16, 1907, IN BOOK 48 AT PAGE [287](#).
3. TERMS, CONDITIONS AND PROVISIONS OF SOPRIS MEADOWS PUD AGREEMENT RECORDED MARCH 12, 1996 IN BOOK 689 AT PAGE [757](#) AND FIRST ADDENDUM TO THE AMENDED ANNEXATION AGREEMENT (SOPRIS MEADOWS PUD) RECORDED JULY 16, 1996 IN BOOK 699 AT PAGE [896](#) AND SECOND ADDENDUM TO AMENDED ANNEXATION AGREEMENT RECORDED JULY 25, 2001 AT RECEPTION NO. [763050](#).
4. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE RECORDED MARCH 12, 1996 IN BOOK 689 AT PAGE [758](#), AND ORDINANCE RECORDED JULY 16, 1996 IN BOOK 699 AT PAGE [895](#).
5. EASEMENTS, COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF SOPRIS MEADOWS PLANNED UNIT DEVELOPMENT RECORDED JULY 16, 1996 IN BOOK 699 AT PAGE [897](#).
6. RESTRICTIVE COVENANTS WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED JULY 16, 1996, IN BOOK 699 AT PAGE [899](#) AND AMENDMENT RECORDED JUNE 8, 2016 AS RECEPTION NO. [201608712](#).
7. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS OF ORDINANCE BY THE TOWN OF BASALT, NO. SERIES OF 2001 RECORDED JULY 24, 2001 AS RECEPTION NO. [762919](#).
8. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS AS SET FORTH IN DECLARATION OF RESTRICTIVE COVENANT RECORDED JULY 25, 2001 AS RECEPTION NO. [763051](#) AND AMENDMENT RECORDED NOVEMBER 10, 2004 AS RECEPTION NO. [897437](#).
9. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE MINOR SUBDIVISION PLAT OF SOPRIS MEADOWS THREE, FILING NO. 3 AND PARCEL 5B RECORDED OCTOBER 10, 2001 AS RECEPTION NO. [769534](#).
10. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS OF DITCH RELOCATION AGREEMENT RECORDED NOVEMBER 14, 2016 AS RECEPTION NO. [201619240](#) AND SECOND DITCH RELOCATIO AGREEMENT RECORDED MARCH 3, 2022 AS RECEPTION NO. [202203633](#).
11. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS OF DRAINAGE AND IRRIGATION EASEMENT AGREEMENT RECORDED SEPTEMBER 30, 2020 AS RECEPTION NO. [202017293](#).
12. TERMS, CONDITIONS, PROVSIONS AND OBLIGATIONS OF ACCESS AND LANDSCAPE EASEMENT AGREEMENT RECORDED SEPTEMBER 30, 2020 AS RECEPTION NO. [202017294](#) AND RERECORDED AS RECEPTION NO. [202017298](#).
13. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS OF SPECIAL WARRANTY DEED FOR DITCH EASEMENT RECORDED MARCH 3, 2022 AS RECEPTION NO. [202203636](#).
14. TERMS, CONDITIONS, PROVISIONS AND OBLIGATIONS OF LANDSCAPE AND PATIO EASEMENT AGREEMENT RECORDED MARCH 3, 2022 AS RECEPTION NO. [202203637](#).