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CONDOMINIUM DECLARATION
OF
PARK GABLES

<u>Name of Common Interest Community:</u>	Park Gables
<u>Type of Common Interest Community:</u>	Condominium
<u>Name of the Association:</u>	Park Gables Owners Association, Inc.
<u>Person Executing the Declaration:</u>	Northern Exposure, LLC

January 29, 2009

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CONDOMINIUM DECLARATION OF
PARK GABLES

THIS CONDOMINIUM DECLARATION OF PARK GABLES (the "Declaration") is made as of January 29, 2009, by Northern Exposure, LLC, a Colorado limited liability company (the "Declarant").

RECITALS

A. Declarant is owner of that certain real property located in the County of Boulder, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101 et. seq. (the "Act") under the name of which is Park Gables.

ARTICLE 1

DECLARATION AND SUBMISSION

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

ARTICLE 2

DEFINITIONS

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

Section 2.1 "Agency" means any agency or corporation such as Housing and Urban Development (HUD), Department of Veteran's Affairs ("VA"), Federal National Mortgage Association ("Fannie Mae") or Federal Home Loan Mortgage Corporation ("Freddie Mac") that purchases, insures or guarantees residential mortgages.

Section 2.2 "Allocated Interests" means the ownership interests in the Common Elements, Common Expenses liability, and votes in the Association, allocated to Units in the Project, as set forth in Exhibit B attached hereto. The Allocated Interests shall be a fraction, the numerator of which is the square footage of the Unit, including any garage area, and the denominator of which is the total square footage of all Units, including all garage areas, then in the Project. The area of each of the Units as set forth in Exhibit B shall be conclusive, even though subsequent measurements may determine different amounts.



Section 2.3 “Articles” mean the Articles of Incorporation for Park Gables Owners Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.4 “Annual Assessment” means the Assessment levied pursuant to an annual budget.

Section 2.5 “Assessments” means the Annual, Special and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a common expense liability as defined under the Act.

Section 2.6 “Association” means the Park Gables Owners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 “Association Documents” means this Declaration, the Articles of Incorporation, the Bylaws, the Map, design guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 “Bylaws” the Bylaws adopted by the Association, as amended from time to time.

Section 2.9 “Clerk and Recorder” means the office of the Clerk and Recorder in the County of Boulder, Colorado.

Section 2.10 “Common Element” means all portions of the Project except the Units and consist of General Common Elements and Limited Common Elements. The Common Elements are owned by the Owners in undivided interests according to the Allocated Interests defined in Section 2.2 above.

2.10.1 “General Common Elements” means all tangible physical properties of this Project and real property, except Limited Common Elements and the Units, for which the Association has an obligation to maintain, repair, replace or operate, and without limiting the foregoing, includes all of the following:

- a. except as specified in paragraph 2.10.2 below, all of the land and landscaping within the Project, including, without limitation, all driveways, curbs, sidewalks, parking areas, fences, and greenspace, including the grass, shrubbery, trees, plants, and gardens, and all other improvements located therein or thereon;
- b. all facilities or improvements within the Project owned or leased by the Association, or which the Association has a right to use or occupy, or which the Association has an obligation to maintain, including, without limitation, all retaining walls, site signage, bike racks, mail kiosks, and fencing (if any);
- c. all foundations, columns, girders, beams and supports of the structures



making up the Units;

d. the exterior walls of the structures making up the Units; the main or bearing walls within the structures making up the Units; and all portions of the walls, floors or ceilings in a structure that are not part of the Unit as described in Section 2.29 below; and

e. in general, all other parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

2.10.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, the Map, in a recorded certificate executed by Declarant pursuant to Article 15, or by action of the Association, for the exclusive use of one or more, but less than all Units. Without limiting the foregoing, the Limited Common Elements specifically includes doorsteps, stoops, porches, balconies, decks, patios, all exterior doors, windows or other exterior fixtures attached to a Unit, and the attic and crawl space located appurtenant to each Unit, and if permitted, all shutters, awnings, window boxes. Any chute, flue, duct, pipe, drain, wire, conduit, bearing wall, bearing column, or other fixture which lies partially within the designated boundaries of a Unit and serves more than one (1) but less than all the Units in the Project is a Limited Common Element allocated solely to those Units that it serves. All stairs and entry landings serving less than all the Units in the Project are Limited Common Elements allocated solely to the Units that they serve. Any parking area designated for the use of a specific Unit is a Limited Common Element allocated solely to that Unit.

Section 2.11 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including but not limited to: (1) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 10; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board.

Section 2.12 "County" means the County of Boulder, Colorado.

Section 2.13 "Declaration" means this Declaration and the Map, and amendments and supplements thereto.

Section 2.14 "Eligible Mortgagee" means a First Mortgagee who has notified the Association, in writing, of its name and address and that it holds a First Mortgage on a Unit. The notice must include the address of the Unit on which it has a First Mortgage. The notice shall include a request that the First Mortgagee be given the notices and other rights described in Articles 17 and 18.

Section 2.15 "Executive Board" or "Board" means the governing body of the Association.



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

Section 2.17 “First Mortgagee” means any person named as a Mortgagee in any First Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.18 “Good Standing” means that an Owner is no more than thirty (30) days late in the payment of any Annual, Special or Default Assessments, and who has none of his, her or its membership privileges suspended.

Section 2.19 “Manager” means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.20 “Map” means the Condominium map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation of all or a part of the Property subject to this Declaration and any annexations, supplements and amendments thereto.

Section 2.21 “Member” means any person or entity that holds membership in the Association.

Section 2.22 “Mortgage” means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

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

Section 2.24 “Owner” means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and “Owner” also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

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

Section 2.26 “Project” means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units and the Common Elements.

Section 2.27 “Successor Declarant” means any person or entity to whom Declarant conveys, assigns or otherwise transfers any or all of its rights, obligations or interest as Declarant, by an instrument evidencing the conveyance, assignment or transfer executed by both the Declarant and the transferee or assignee and recorded with the Clerk and Recorder in the County.

Section 2.28 “Supplemental Declaration” means an instrument which amends this



Declaration.

Section 2.29 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project.

Section 2.30 "Unit" means the fee simple interest and title in and to an individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings, including any attached garage, together with the appurtenant interest in the Common Elements. All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the interior finished surfaces thereof are a part of the Units. The Unit shall include any fireplace, fireplace flues, chimneys, chases, heating and refrigerating elements, duct work, or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, drains, flues and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, sewage or other utility services solely to the Unit. The Owner shall not be deemed to own lines, pipes, wires, conduits or systems running through his Unit which serve one or more other Units. For purposes of this definition of Unit, the terms set forth below shall have the meanings ascribed:

2.30.1 "Unfinished Perimeter Wall" means the studs, supports and other wooden, metal or similar structural materials which constitute the interior face of a wall of a Unit, but not including any lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, or other materials.

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

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

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

ARTICLE 3

NAME, DIVISION INTO UNITS

Section 3.1 Name The name of the Project is Park Gables. The Project is a Condominium pursuant to the Act.

Section 3.2 Association The name of the Association is the Park Gables Owners



Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units. The Declarant reserves the right to create a maximum of 13 Units in the Project, and such number of Units shall have the meaning of the Units that may be created under the Act. The aforesaid number of Units that may be created is not a representation or guarantee as to the actual number of Units that will ultimately be included in or constructed as part of the Project. The Project is not created until the Map is recorded with the Clerk and Recorder.

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

Section 3.5 Description of Units.

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

3.5.2 Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit may describe it by its Unit number, Park Gables, County of Boulder, State of Colorado, according to the Map and as defined and described in the Declaration thereof describing the date and reception number of recording of the Map and Declaration, as they may be amended from time to time.

Section 3.6 Separate Parcels and Taxation. Each Unit shall be deemed to be a parcel and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including ad valorem levies and special assessments. No part of the Project other than Units shall be deemed a parcel. The lien for taxes assessed to any Unit shall be confined to such Unit. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any other way affect the title to any other Unit.

ARTICLE 4

RESTRICTIONS ON USE OF UNITS

Section 4.1 Use and Occupancy Regulation, General. All of the Units shall be held, conveyed, used, improved, occupied, owned, resided upon and secured subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration. These restrictions are general in nature and the Executive Board shall have the power to adopt, amend, repeal and enforce more specific and restrictive design and architectural guidelines, and rules, regulations, restrictions and policies as the Executive Board deems to be reasonable and necessary.



Section 4.2 Residential Use of Units. Subject to the provisions of Section 15.5 herein, a Unit shall be used and occupied only as a residence, operating on a nonprofit, noncommercial basis. Notwithstanding the above, a Unit may be used for home operated businesses, so long as such business is (i) allowed by zoning resolutions; (ii) is not apparent or detectable by sight, sound, smell or vibration from the exterior of the Unit, (iii) does not increase traffic or parking within the Project; and (iv) does not increase the insurance obligation or premium of the Association, except that no Unit may be used for any business providing day care or child care services, whether licensed or unlicensed.

Section 4.3 Rental Restrictions. Subject to the remaining provisions of this Section 4.3 and the provisions of Article 19, an Owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) no leases shall be made for less than a one-month period; (ii) no lease shall be for less than the entire Unit; (iii) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents and a copy of the Association's rules are provided to the Lessee with the lease; (iv) no Unit may be sublet; (v) a Unit may be leased only for the uses provided herein; (vi) any Unit available for lease shall be professionally managed during the duration of any lease; and (vii) any failure of a lessee to comply with the terms of this Declaration or any other Association Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. Units A, C-1 and D are subject to additional rental restrictions as set forth in the title to such Units. In order to assure eligibility of the Project for any Agency, the Association may adopt rules and regulations with respect to rental of Units to non-Owners. As used herein, the term lease shall mean any agreement or arrangement for occupancy of the Unit by persons other than the Owner.

Section 4.4 Right to Adopt Rules Regulating Units and Common Elements. Each Owner and Permitted User may use the Limited Common Elements allocated to his or her Unit and the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Executive Board may adopt rules, regulations, restrictions or policies governing or restricting the use of the Units, Limited Common Elements and the Common Elements. Each Owner and Permitted User, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to his or her Unit, agrees to be bound by any such adopted rules, regulations, restrictions or policies. No Owner or Permitted User shall cause, or further, an obstruction of the Common Elements or Limited Common Elements, nor shall anything be stored on any part of the Common Elements or Limited Common Elements, without prior written consent of the Executive Board or if appointed by the Executive Board, the Architectural Review Committee. Nothing shall be altered, constructed on, or removed from the Common Elements or Limited Common Elements except upon the prior written consent of the Executive Board.

Section 4.5 Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 15, the following occupancy restrictions apply to all Units and to the Common Elements:



4.5.1 No offensive or unlawful use may be made of the Project. Owners and Permitted Users shall comply with and conform to all applicable laws and regulations of the United States, the State of Colorado, the City and County of Boulder and all other governmental ordinances, rules and regulations; violations thereof shall be a breach of this Declaration subject to enforcement by the Association. No Unit shall be used for any purpose not in compliance with any local, state or federal law, statute or other ordinance, regulation or rule. No portion of the Project may be used for the manufacture, storage or disposal of hazardous materials other than in reasonable quantities typically used for purposes of residential cleaning, maintenance and repair.

4.5.2 Except as expressly permitted by this Declaration, no noxious, offensive, dangerous or unsafe activity shall be conducted in or on any Unit or the Common Elements, nor shall anything be done, either willfully or negligently, which may be or become an unreasonable annoyance or nuisance to the other Owners or Permitted Users. No Owner or Permitted User shall make or permit any disturbing noises nor do or permit anything to be done by others that will unreasonably interfere with the rights, comforts or convenience of other Owners or Permitted Users. Determination of whether an activity violates this covenant shall be at the discretion of the Executive Board or a committee appointed by the Executive Board, and shall be subject to rules, regulations, restrictions and policies adopted by the Executive Board. The terms "annoyance" and "nuisance" shall not include any activities of Declarant which are necessary to the development and construction of, and sales activities on, the Project.

4.5.3 Except as may be approved in writing by the Executive Board, nothing shall be done or kept which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

4.5.4 No household pet or animal shall be allowed in or about the Project, including Common Elements, except in compliance with the terms of this Declaration and in compliance with such additional rules, regulations, restrictions and policies issued by the Executive Board, which may supplement, but not supersede or be less restrictive than, the provisions of this Section 4.5.4. No Owner or Permitted User shall keep more than two (2) of any combination of dogs and cats at any time. No household pet or animal shall be allowed at any time without adequate supervision by an Owner or Permitted User, or left unattended outside a Unit. Owners will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive or prolonged noises created by their pets. Animals may not be kept for any commercial purposes. The right to keep animals as household pets shall be coupled with the responsibility to pay for any damage caused by such animals, and any damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's



rights with respect to the collection and enforcement of assessments as provided in this Declaration.

4.5.5 Vehicle parking is allowed only in garages of Units, and subject to such rules, regulations and restrictions as may be adopted by the Executive Board, in unassigned, designated surface parking areas. Notwithstanding the above, temporary vehicle parking lasting less than two hours is allowed on the asphalt paved surface areas as long as it does not interfere with or block garage access, designated parking areas or vehicular traffic within the Project. Except as allowed by the Act, and except in emergencies or as a temporary expedience for loading or unloading, commercial vehicles, motor homes, recreational vehicles, all terrain vehicles, boats or boat accessories, trailers, campers, busses, trucks (as defined by C.R.S. 42-1-102) rated as larger than three-quarter (3/4) ton, and other oversized vehicles or equipment shall not be stored or parked anywhere on the Project unless such parking, placement, or storage is within the garage of a Unit.

4.5.6 No abandoned or inoperable vehicle or equipment of any kind shall be stored or parked on the Project unless it is kept within the enclosed garage of a Unit. An "abandoned or inoperable vehicle or equipment" shall be defined as any vehicle which is not capable of being driven under its own propulsion, or does not have current registration, or license plates or other identifying marks have been removed from the vehicle or equipment, or the vehicle exhibits other characteristics of abandonment or inoperability, such as, but not limited to, flattened tires. The Executive Board shall have the right to tow, remove or store a vehicle or equipment in violation of this Section in accordance with rules, regulations, restrictions or policies adopted by the Executive Board, the expense of which shall be levied against the Owner of the vehicle or equipment.

4.5.7 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicle, trailer, boat or equipment, may be performed or conducted on the Project unless such activity is within the garage of a Unit and cannot be seen or heard from any other Unit. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing within the Project.

4.5.8 No signs of any nature shall be placed or permitted within the Project except political signs permitted under the Act and "For Sale," "For Rent," and "Open House" signs as may be permitted under the provisions of sign policies adopted by the Executive Board from time to time.

4.5.9 The Association shall provide for regular trash removal as a Common Expense. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate on any Common Element or Unit unless placed in a



container provided solely for the purpose of garbage pickup. No garbage or trash containers or receptacles shall be maintained in an exposed or unsightly manner. The Executive Board may require any Owner to arrange and pay for trash removal of excessive amounts of trash, garbage or other refuse.

4.5.10 All satellite dishes and devices or facilities to transmit or receive electronic signals, radio or television waves are prohibited outside a Unit or a Limited Common Element under the exclusive use and control of an Owner unless first approved by the Executive Board in conformance with applicable federal law.

4.5.11 No fences shall be permitted, except such as may be constructed, installed or located by the Declarant in the development of, or construction of the Project, or following the conveyance of the last Unit to be conveyed by Declarant in the ordinary course of business, by the Association. Without limiting the generality of the foregoing, the Executive Board may at any time, and from time to time, promulgate and publish guidelines, rules or regulations regarding the permitted types, locations, materials, and other matters having to do with fences.

4.5.12 Exterior fireplaces and fire pits shall be kept clean, and free from debris that may constitute a fire hazard.

4.5.13 In addition to the restrictions on use and occupancy set forth above, the Association shall have and may exercise the right to control Owners' use and occupancy of their respective Units and Limited Common Elements in any reasonable and lawful manner approved by the Executive Board.

Section 4.6 Affordable Units. As part of its development of the Project, Declarant has agreed with the City of Boulder to designate Units A, C1, and D as permanently affordable. Owners of such Units are subject to, and must abide by, the terms of all applicable restrictive covenants entered into between Declarant and the City of Boulder and recorded in the public records of the Clerk and Recorder. Further, this Declaration, and Declarant's obligations and rights herein are subject to the provisions of that particular document entitled Permanently Affordable Condominium Unit Interim Covenant dated March 16, 2007, and recorded April 3, 2007 at Reception Number 2040913 in the offices of the Clerk and Recorder of Boulder County, Colorado, the terms of which document with respect to the definition of Affordable Units, Affordable Unit buyer income certification requirements, marketing to and selection of eligible buyers, sales price limitations, owner occupancy and rental limitations for the Affordable Units, as well as any provisions of the Boulder Revised Code addressing such matters are incorporated herein as if fully set forth.

Section 4.7 Anderson Ditch. The Anderson Ditch passes through the southern portion of the Project. The Association and all Owners are obligated by and shall abide by the terms of the Agreement between the Anderson Ditch Company and Northern Exposure, LLC, dated December 20, 2006 and recorded on February 20, 2007 as Reception No. 2837388 in the offices



of the Clerk and Recorder of Boulder County, Colorado (the "Anderson Ditch Agreement").

Section 4.8 Adjoining Property. The real property adjacent to the southern boundary of the Project is privately owned. Access to this property is strictly prohibited unless authorized by the owner thereof.

Section 4.9 Wildfire Hazard. Each Owner must be cognizant of the possibility of wildfires and must act responsibly to prevent wildfires and to protect property and the environment. Failure to do so shall constitute a nuisance.

Section 4.10. Living With Wildlife. It is likely that wildlife will live on or visit the Project. Care must be taken to avoid undesirable or inappropriate contact with wildlife. Owners must act responsibly when living with wildlife. Owners and their Permitted Users must manage appropriate storage and disposal of garbage and trash to prevent animal intrusions. Pets shall be restrained by their Owners from interfering with wildlife and wildlife habitats.

Section 4.11 Soils. Declarant has provided to the first owner of a Unit a copy of a summary of the soils analysis and site recommendation ("Soils Analysis") relating to the Project, in addition to a publication detailing the problems associated with construction on such soils and suggestions for cure and maintenance, all as required by C.R.S. 6-6.5-101. Each Owner, as a condition of conveyance of a Unit by Declarant, hereby covenants and agrees for himself, his successors and assigns, to provide a copy of the Soils Analysis to his grantee prior to Owner's transfer of title to the Unit.

Section 4.12 Incomplete Development. Owner acknowledges and recognizes that it may be purchasing the Unit during a period in which construction is or will be occurring on the Project, and there may be certain inconveniences until construction is completed, including without limitation, significant noise, odors, vibration, and dust, and Owner waives all claims against Declarant with respect thereto. Notwithstanding any provision in this Declaration to the contrary, Owners or their Permitted Users may not enter onto any area of construction.

Section 4.13 Damage Caused by Owner or Permitted User. If, due to the act or neglect of an Owner or Permitted Users, loss or damage shall occur or be caused to any person or property other than the Owner's Unit, such Owner or Permitted User shall be liable and responsible for the payment of same. The amount of such loss or damages and any costs incurred by the Association in connection with the enforcement of the Association's rights shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in this Declaration.

Section 4.14 No Partition, Subdivision or Combination. No portion of the Project shall be subject to an action for partition or division and no Units shall be subdivided, resubdivided or combined.



ARTICLE 5

THE ASSOCIATION

Section 5.1 The Association. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

Section 5.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right.

Section 5.3 Membership: Voting Rights. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. No Owner shall be entitled to vote in any matter who is not in Good Standing with the Association. Except as otherwise provided for in this Declaration, each Member who is in Good Standing shall be entitled to vote in Association matters as set forth in Section 2.2. above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents.

Section 5.4 Declarant Control.

5.4.1 Subject to Subsections 5.4.2 and 5.4.3 below, there shall be a "Period of Declarant Control" during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The Period of Declarant Control terminates no later than the earlier of:

- (a) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Owners other than the Declarant; or
- (b) Two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business to Owners other than Declarant; or
- (c) Two (2) years after any right to add new Units was last exercised.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control. In that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

5.4.2 Not later than sixty (60) days after conveyance of twenty-five percent



(25%) of the Units that may be created to Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than the Declarant.

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

5.4.4. Not later than the termination of any Period of Declarant Control, the Owners, including Declarant if Declarant owns any Units, shall elect Executive Board of at least three (3) members, in which at least a majority of whom shall be Owners other than Declarant. The Executive Board shall elect the officers. The Owners elected to the Executive Board shall take office upon election.

Section 5.5 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

- a. The original or a certified copy of the recorded Declaration, as amended, the Articles of Incorporation, Bylaws, minute books, other books and records, and any rules, regulations and policies which may have been promulgated;
- b. An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends;
- c. The Association funds, books and records;
- d. All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Elements;
- e. A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Project;
- f. All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons;
- g. Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Project;
- h. Any other permits issued by governmental bodies applicable to the Project and which are currently in force or which were issued within one (1) year prior to



the date on which Owners other than the Declarant took control of the Association;

- i. Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective;
- j. A roster of Owners and Eligible Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- k. Employment contracts in which the Association is a contracting party; and
- l. Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

Section 5.6 Executive Board. Except for members of the Executive Board appointed by the Declarant during the Period of Declarant Control, all members of the Executive Board shall be Members of the Association, or in the event that a Member is an entity other than a natural person, such member of the Executive Board shall be an authorized representative of such entity Member. Subject to the provisions of Section 5.4 above, during the Period of Declarant Control, the Executive Board shall consist of three (3) directors, none of whom need be Members of the Association. Following the Period of Declarant Control, the Executive Board shall consist of three directors. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 38-33.3-308 of the Act, the Owners, by a vote of two-thirds (2/3) of the members present and entitled to vote at a meeting of the Owners at which a quorum is present, may remove a member of the Executive Board, other than members of the Executive Board appointed by the Declarant, with or without cause.

Section 5.7 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials not to exceed the actual cost per page. The Association shall maintain such books and records as may be required under the Act.

Section 5.8 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association.

Section 5.9 Implied Rights. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act, whether expressed herein or not.



ARTICLE 6

DUTIES AND POWERS OF THE ASSOCIATION AND EXECUTIVE BOARD

Section 6.1 Duties and Powers of the Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Executive Board or persons to whom the Executive Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members of the Association, to maintain, improve and enhance the Common Elements, and to maintain, improve and enhance the health, safety, value, attractiveness and desirability of the Project. Without in any way limiting the general scope of the foregoing, the Association shall have the following specific duties and powers:

6.1.1 Duty to Manage and Care for General Common Elements. The Association shall regulate the use of, manage, operate, care for, maintain, repair and replace all General Common Elements and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members.

6.1.2 Duty to Pay Taxes and Assessments. The Association shall pay all taxes and assessments, if any, levied upon the Common Elements and all other taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment, and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

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

6.1.4 Duty as to Budgets. The Association shall prepare, and submit to the Owners, annual budgets for revenues, expenditures and reserves for the Association as elsewhere provided in this Declaration.

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

6.1.6 Duty to Keep Records. The Association shall keep current copies of the Association Documents and shall make them available for inspection and copying as more fully provided in Section 5.7 above.



6.1.7 Duty to Maintain Register of Addresses and Notify of Address Change.

The Association shall maintain a "Register of Addresses" which contains the address (which shall include the facsimile number, if any, and, if the recipient desires to receive notices from the Association by e-mail, the e-mail address) of each Owner, the Association and Declarant. The initial address for each Owner in the Register of Addresses shall be the address for such Owner set forth in the deed or other instrument of record conveying the Unit to such Owner, or, if no such address is set forth, the address of the Unit of such Owner. Any Owner may change its address in the Register of Addresses by giving notice to the Association of a new address in accordance with Section 21.2, and the Association shall update the Register of Addresses in accordance with any such notice. The Association shall provide the address for each Owner as listed in the Register of Addresses to any Member who requests such information and certifies to the Association in writing that they intend to use such information to give notice to Owners under this Declaration. The Association shall have no liability to any person (including any Owner or Declarant) for providing the address as listed in the Register of Addresses, regardless of whether such address is correct or whether any director, officer, employee or agent of the Association has knowledge, actual or imputed, that the address in the Register of Addresses is not correct. No information with respect to Declarant's or any Owner's address shall be imputed to the Association or any director, officer, employee or agent of the Association, and the Association shall be entitled to rely solely on the initial address determined in accordance with this Section 6.1.7 or the most recent address, if any, furnished to the Association by Declarant or any Owner by notice given in accordance with Section 21.2.

6.1.8 Power to Adopt Bylaws and Rules, Regulations, Restrictions and Policies.

The Association may adopt, amend, repeal and enforce Bylaws and such rules, regulations, restrictions and policies as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Units or the Common Elements, the use of any other property within the Project, and otherwise for the benefit of the Project and the Owners. Any such rules, regulations, restrictions and policies shall be reasonable and uniformly applied. Written notice of the adoption, amendment or repeal of any rules, regulations, restrictions and policies shall be posted at the Association office, and copies of the currently effective rules, regulations, restrictions and policies shall be made available to each Member upon request and payment of the copying cost. Each Member shall comply with such rules, regulations, restrictions and policies and shall see that Permitted Users of such Member comply with the rules, regulations, restrictions and policies. Rules, regulations, restrictions and policies shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the rules, regulations, restrictions and policies, and the provisions of this Declaration, the provisions of this Declaration shall prevail.



6.1.9 Power to Enforce Covenants and Rules. The Association shall have the power to enforce the provisions of the Documents, and shall take such action as the Executive Board deems necessary or desirable to cause compliance by each Member and Permitted Users. Without limiting the generality of the foregoing, the Association shall have the power to impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the Association Documents, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents.

6.1.10 Power to Make Contracts and Incur Liabilities. The Association shall have the power to make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days or less written notice.

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

6.1.12 Power to Employ Managers, Other Employees, Agents and Independent Contractors. The Association shall have the power to retain and pay for the services of a Manager, other employees, agents and independent contractors to undertake any of the management or functions for which the Association has responsibility under this Declaration to the extent deemed advisable from time to time by the Executive Board, and may delegate any of its duties, powers or functions to the Manager, other employees, agents or independent contractors.

6.1.13 Power to Engage Employees, Agents and Consultants. The Association shall have the power to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

6.1.14 Power to Commence and Maintain Legal Actions. The Association shall have the power to commence and maintain, defend or intervene in litigation, arbitration and administrative proceedings in its own name on behalf of itself or two or more Owners regarding such issues and against such parties as may be deemed appropriate by the Executive Board and as may be permitted under the Act, subject, however, to the provisions of Article 20 herein. In determining whether to commence or maintain legal actions, the Executive Board shall exercise its reasonable judgment, considering, without limitation, the likelihood of success, the impact, if any, which such action may have upon the market values of the Units, the cost of pursuing the action including attorneys' fees and expert fees, the resources of the Association and whether a special assessment or depletion of reserves will be required in connection therewith or as a result thereof.



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

6.1.16 Power to Acquire and Maintain Property and Construct Improvements; Power to Convey Common Elements. The Association may acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The Association may construct improvements on property and may demolish existing improvements owned by the Association. The Association shall have the power to maintain public or private rights-of-way and to perform maintenance on any portion of the Project, provided that if such portion of the Project is not owned by the Association, the owner of such portion shall have given its consent to such maintenance. Common Elements may be conveyed in fee only if (a) Members to whom at least two-thirds (2/3) of the votes are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of Eligible Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to convey that Limited Common Element.

6.1.17 Power to Impose Fees and Charges. The Association shall have the power to impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements, and the Association shall have the power to impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments.

6.1.18 Power to Provide Special Services for Members. The Association shall have the power to provide services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, which shall provide for payment to the Association by such Member or group of Members of the costs and expense which the Association incurs in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Member or group of Members, and that the payment for such services shall be secured by a lien on the Units of the Member or group of Members and may be collected in the same manner as an Assessment, or, if the written agreement so provides, in installments as part of the Assessments.

6.1.19 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and assign its future income, including its right to receive Assessments upon resolution of the Executive Board. Further, the Association shall have the power to encumber, in the name of the Association, any right, title or interest in real or personal property, except that Common Elements may be subjected to a security interest only if (a) Members to whom at least two-



thirds (2/3) of the votes are allocated agree to that action, (b) the provisions of Article 17 are followed with respect to approval of Eligible Mortgagees, and (c) if all Owners of Units to which any Limited Common Element is appurtenant agree in order to subject it to a security interest. Notwithstanding the provisions of this Section 6.1.19, any security interest granted by the Association shall be junior to the interest of U.S. Bank National Association under that certain Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Revenues, dated January 15, 2008 and recorded on January 22, 2008 as Reception No. 2906090 of the records of the Clerk and Recorder of Boulder County, Colorado ("Deed of Trust"), as to the property encumbered by the said Deed of Trust, for so long as said Deed of Trust encumbers the Property or any portion thereof.

6.1.20 Power to Indemnify. The Association shall have the power to provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance.

6.1.21 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado nonprofit corporation formed under the Act and the Colorado Revised Nonprofit Corporation Act, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation, the Bylaws, the Act or the Colorado Revised Nonprofit Corporation Act. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration, the Articles of Incorporation or Bylaws, the Act or the Colorado Revised Nonprofit Corporation Act and to do and perform any and all acts which may be necessary or desirable for the governance and operation of the Association.

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

ARTICLE 7

MECHANIC'S LIENS

Section 7.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit, nor the Association, shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Unit.

Section 7.2 Indemnification. If, because of any act or omission of any Owner, any



mechanics or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 7.3 Association Action. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

ARTICLE 8

EASEMENTS

Section 8.1 Recorded Easements. The Project shall be subject to all easements set forth herein, those shown on any Map or plat, those of record (including those set forth in Exhibit C attached hereto), those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 8.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors, assigns, the Association and for Owners hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units, or improvements on the Project or other real property owned by Declarant, or other properties abutting and contiguous to the Project, or to perform warranty work and repairs and construction work on the Units and Common Elements, to store materials in secure areas and to control and have the right of access to work and repair until completion. Such rights may be exercised by Declarant from time to time, and at different times until completion of the Project by Declarant, and no failure to exercise such rights at any time or for a period of time shall constitute a waiver of the rights contained herein.

Section 8.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Project for the benefit of the Common Elements and the Units and the structures and improvements situated on the Project for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity, except that any such easements not in existence as of



the date of recording this Declaration may not be utilized by the utility providers until after receiving written approval from the Executive Board. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required or desirable in the future. By virtue of this easement, after receiving approval of the Executive Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Project, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Project and all improvements thereon to their condition as they existed prior to the utility providers performing any work.

Section 8.4 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 8.5 Emergency Access. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Project in the proper performance of their duties.

Section 8.6 Maintenance and Repair Access. Some of the Common Elements are or may be located within a Unit, or are accessible only through a Unit. All Owners shall permit a right of entry to the Executive Board, or any other person authorized by the Executive Board, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for the routine maintenance, repair, or replacement of any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit. For routine maintenance and non-emergency repairs, entry shall be made only on a regular business day during regular business hours, after service of at least one day's notice in writing to the Owner. In case of emergency, entry may be made at any time provided that a reasonable effort according to the circumstances is made to give notice of entry. The Board or its agent is granted the authority to use such reasonable force as is necessary to gain entry into the Unit in the event of an emergency, if no other means of entry are available in view of the circumstances.

All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as a Common Expense of the Association. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort arising from the making of



repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially to the same as the condition in which they existed prior to the damage.

ARTICLE 9

MAINTENANCE

Section 9.1 Maintenance by Owners. Each Owner shall maintain, repair and replace, as necessary: (a) the interior of his Unit, including non-supporting walls and the surface materials such as plasters, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors, windows and screens, and fireplaces, chimneys and flues; (b) fixtures and equipment installed within, or solely for the benefit of, the Unit, including any heating and refrigerating elements, duct work, or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, drains, flues and all other related equipment required to provide heating, air conditioning, hot and cold water, electrical, sewage or other utility services to the Unit; (c) utility service lines serving the Unit to the point and including where such lines connect with utility lines serving other Units; (d) except as provided in Section 9.4 below, the Limited Common Elements appurtenant to such Owner's Unit including, without limitation, all allowable improvements made to the Limited Common Elements by the Owner, including utility lines serving components of such Limited Common Elements, and including routine maintenance and cleaning, and (e) those portions of the Common Elements and the Units, including the Owner's Unit, damaged or destroyed by an event of casualty in or emanating from the Owner's Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement.

Section 9.2 Owner's Failure to Maintain or Repair. In the event that (1) a Unit, including the allocated Limited Common Elements, is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Common Elements or a Unit is damaged or destroyed by an event of casualty in or emanating from the Owner's Unit and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Common Element or Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Common Elements and the Unit to a condition of good order and repair. In the event that a Unit is not properly maintained or repaired, and such failure results in damage to the Common Elements appurtenant to the Unit, the Owner of the Unit shall be responsible for the costs incurred by the Association in connection with the restoration and repair of the Common Elements. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand and the expense therefor shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessment.



Section 9.3 Owner's Failure to Notify of Repairs To Common Elements. Each Owner shall be responsible for notifying the Association, in a timely manner, of any necessary repairs to the General Common Elements located within that Owner's Unit. An Owner shall be responsible for all damages to the General Common Elements that result from their failure to make such a timely repair request to the Association. All costs incurred by the Association in connection with the repair of the General Common Elements, attributable to the Owner's omission, shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessment.

Section 9.4 Maintenance by Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements (except as set forth in Sections 9.1 thru 9.3 above). Without in any way limiting the general scope of the foregoing, the Association shall be responsible for the maintenance, repair and replacement of the following:

- a. the exteriors of the structures making up the Units, including the roofs, walls, foundations, gutters, downspouts, and exterior lights (excluding lightbulb replacement on the residential structures).
- b. all landscaping, fences, retaining walls, sidewalks (including the sidewalk fronting Arapahoe Avenue), curbs, gutters, streetlights, parking areas, mail kiosks, bike racks, and entry signage within the Project.
- c. the storm drain system and any other drainage structure (including underdrains and interceptor drains) or facility, or other public improvements required by local governmental entities under Section 38-33.3-307(1.5) of the Act, whether such improvements are located on Common Elements, in easements, and/or on publicly-dedicated property, unless they have been dedicated to and accepted by a local government entity or special or metropolitan district for the purpose of maintenance, repair and replacement.
- d. the filtering system located by the detention pond.

9.4.1 Patios, Porches and Decks. The Association shall be specifically responsible for the repair or replacement, of the materials making up the walking surface of patios, porches, and decks appurtenant to each Unit, except that any allowable improvements made to, or located on such deck, patio, or porch shall be maintained, repaired, or replaced by the Owner thereof.

9.4.2 Anderson Ditch. The Association shall be responsible to maintain, repair, and replace the pipeline and related facilities described in Exhibit C of the Anderson Ditch Agreement (as defined in Section 4.7 above). Such maintenance shall be in accordance with Paragraph 5 of the Anderson Ditch Agreement.

9.4.3 Snow and Trash Removal. The Association's maintenance obligations shall also include providing for snow and trash removal services, unless



performed by another private or public entity formed for such purposes.

Section 9.5 Association Maintenance as Common Expense. Subject to availability of any insurance proceeds, the cost of maintenance and repair by the Association shall be a Common Expense. Damage to the interior or any part of a Unit resulting from the maintenance, repair, or replacement of any of the General Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of an Owner, or Permitted User, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner or Permitted User's negligence caused such damage, which must be timely paid.

Section 9.6 No Other Alterations to Common Elements. Except as required herein, no Owner shall make any addition or other alteration to any portion of the Common Elements (either General and Limited Common Elements), no matter how minor, including the installation or planting of additional landscaping, without the express written consent of the Executive Board, which consent may be withheld in the Executive Board's sole and absolute discretion.

ARTICLE 10

INSURANCE

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

10.1.1 Hazard Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the improvements located on the Project including all of the Units and Common Elements, including all interior and perimeter walls and floors, partitions, decorated and finished surfaces of interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units, but excluding any fixtures, equipment or other property within the Units and any betterments and improvements made by Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. The Association shall obtain insurance covering the original specifications of each Unit.

10.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board



deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including death and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager, and their respective agents and employees, and the Owners from liability in connection with the operation, maintenance and use of Common Elements. The policy must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominium projects. The executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability and automobile insurance on all of which the Association is named as an additional insured.

10.1.3 Requirements of Hazard Insurance and Comprehensive Liability Insurance. The insurance policies required by Sections 10.1.1 and 10.1.2 above may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary coverage.

Section 10.2 Owner Policies. Each Owner of a Unit may, but is not obligated to, obtain and maintain the following insurance coverage: (1) property insurance coverage on the furnishings, fixtures and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit; (2) casualty and liability insurance coverage for each Unit and the Common Elements appurtenant thereto; and (3) loss of use insurance coverage for additional living expenses and the fair rental value of the Unit.

Section 10.3 Certificates of Insurance: Cancellation. Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried by the Association under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and



each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 10 required to be obtained by the Association is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

Section 10.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 10.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 10.5 Repair and Replacement. Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (i) the common interest community created by this Declaration is terminated in which case the approval must first be obtained of Owners to whom two-thirds (2/3) of the votes in the Association are allocated; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) there is a vote not to repair or replace by (a) Owners to whom at least two-thirds (2/3) of votes in the Association are allocated and (b) every Owner of a Unit or assigned Limited Common Element that will not be repaired or replaced; or (iv) prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds. Any portion of a Unit which is damaged or destroyed must be repaired or replaced promptly by the Unit Owner.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Owner's allocated interests in ownership of the Common Elements.

Section 10.6 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others, including any Manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) fifty thousand dollars (\$50,000) or (b) the estimated maximum amount of funds, including reserve funds, in the custody of the



Association or Manager as the case may be, at any given time during the term of each policy as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 10.7 Directors and Officers Liability Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a member of the Executive Board or incurred by him in his capacity of or arising out of his status as a member of the Executive Board.

Section 10.8 Other Insurance. The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

Section 10.9 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses, provided, however, that if some of the insurance is attributable to some but not all of the Units, the Association reserves the right to charge the Owners for which the insurance coverage is attributable, an amount equal to the premium attributable to such additional insurance coverage.

Section 10.10 Policies Regarding Submittal of Claims; Allocation of Deductibles. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a pro rata share of any deductible paid by the Association.

ARTICLE 11

ASSESSMENTS

Section 11.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. Each Assessment against a Unit is the personal obligation, jointly and severally, of the Owner(s) at the time the Assessment became due and shall not pass to



successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration. All Assessments shall be payable in accordance with the levy thereof, and no offsets or deductions thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under the Association Documents.

Section 11.2 Budget. The Executive Board shall, in advance, prepare and adopt a proposed Common Expense budget at least ninety (90) days before expiration of the fiscal year based on estimated Common Expenses. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as required herein or deemed desirable or necessary by the Association, landscaping of the Common Elements, care of grounds within the Common Elements, routine repairs and renovations within the Common Elements, wages, common water and sewer utility charges for the Common Elements and the Units, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed. Within ninety days after adoption of the proposed budget, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as provided for in the Bylaws. The budgets proposed by the Executive Board do not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by the Owners to whom at least two-thirds (2/3) of the interests in Common Elements are allocated, whether or not a quorum is present. In the event that a proposed budget is rejected, the periodic budget last approved by the Executive Board shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

Section 11.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the adopted budget. The Executive Board shall levy and assess the Annual Assessments to each Owner in accordance with the Allocated Interests in effect on the date of the Annual Assessment, provided, however, that any expense associated with the maintenance, repair or replacement of a Limited Common Element may be assessed against the Units to which the Limited Common Element is assigned, equally among such Units, and the Executive Board reserves the right to allocate all expenses relating to fewer than all of the Units to the owners of those affected Units only. Annual Assessments shall be payable in advance monthly or on such other basis as may be determined by the Executive Board, and shall be due on the first day of each period in regular installments on a prorated basis. The omission or failure of the



Association to fix the Annual Assessments for any assessment shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

Section 11.4 Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to each Unit on the first day of the month following the effective date of adoption of the budget, except that no assessment shall be owed as to a particular Unit until a temporary or permanent certificate of occupancy has been issued for such Unit. Until commencement of the Annual Assessments, the Declarant shall pay all Common Expenses of the Association.

Section 11.5 Special Assessments. In addition to the Annual Assessments, the Board may levy one or more Special Assessments without approval of the Owners, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess the Special Assessment only against the Owners of affected Units. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less thirty (30) days after such notice has been given.

Section 11.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration.

Section 11.7 Effect of Nonpayment: Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid when due shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) If the delinquency continues for a period of fifteen (15) days, assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) If the delinquency continues for a period of thirty (30) days, assess an interest charge from the due date until paid at the yearly rate of eighteen percent (18%) per year;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate all remaining Assessment installments so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;



- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments;
- (vi) Proceed with foreclosure as set forth in more detail below; and
- (vii) Following notice and an opportunity to be heard, suspend any of the Owner's membership privileges.

Assessments chargeable to any Unit shall constitute a lien on such Unit. Such lien will be subject to the provisions of Colorado Revised Statutes, Section 38-33.3-316. Such lien will be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law should be superior and (ii) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments will be prior to a First Mortgage to the extent of an amount equal to the Assessments which would have come due, in the absence of acceleration, during the six months immediately preceding institution by either the Association or any First Mortgagee of an action or a nonjudicial foreclosure either to enforce or extinguish the lien. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any homestead exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 11.8 Payment by Mortgagee. Any Mortgagee holding a lien on a Unit may pay any unpaid amount payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgagee.

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



due as of the date of the request.

Section 11.10 Capitalization of the Association. The Association shall require each Owner of any Unit (other than Declarant) upon the acquisition of the Unit to make a nonrefundable contribution to the Association in the amount equal to one-sixth (1/6) of the total annual assessment at the time of purchase (regardless of whether or not assessments have commenced as provided herein). Said contribution shall be collected and transferred to the Association at the time of closing of the purchase of the Unit as aforesaid, and shall be deposited into a working capital fund, which may be used for the benefit of the Association as the Board deems appropriate, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services. Such contributions shall not relieve an Owner from making regular payments of assessments as the same become due.

Section 11.11 Maintenance Accounts: Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a Manager, then such other persons or Manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or Manager, (b) maintain all reserve accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association no less than once per quarter an accounting for the previous quarter. In addition, the Association shall obtain an annual accounting and financial statement of Association funds (on either a review or audit basis, at the Association's discretion or as specified by the Act) and annual tax returns prepared by a certified public accountant.

ARTICLE 12

DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. Except as provided in Section 10.5, in the event of damage to or destruction of all or part of any General Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "Association-Insured Property").

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, to the extent of insurance proceeds, unless the approval is obtained from Owners to whom at least two-thirds (2/3) of the ownership interests in the Common Elements are allocated, including every Owner of a Unit or assigned Limited Common Element that will not be repaired or reconstructed. Such costs may also include professional fees and premiums for such bonds as



the Executive Board or the insurance trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, including obtaining approval of the Landmark Preservation Advisory Board, if necessary, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 11.5, levy, assess and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in a like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be retained by the Association to offset future expenses of the Association.

ARTICLE 13

CONDEMNATION

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

Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and



Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners to whom at least two-thirds (2/3) of the ownership interests in the Common Elements are allocated shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executives Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be retained by the Association to offset future expenses of the Association.

Section 13.3 Complete Condemnation. If all of the Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that approval must first be obtained of fifty-one percent (51%) of Eligible Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in the Colorado Revised Nonprofit Corporation Act upon liquidation of the Association.

ARTICLE 14

ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of (a) granting easements pursuant to Article 8, (b) purchasing and maintaining insurance pursuant to Article 10, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 12, (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article 13, above, or (d) acting in any other capacity on behalf of the Owners when approval by the Owners is required and has been obtained. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Project shall constitute appointment of the Association as the grantee's attorney-in-fact for the purposes provided for herein, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.



ARTICLE 15

RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 15.1 Reserved Development Rights of Expansion. Declarant reserves the right, without consent of any Owner or Mortgagee being required, for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Project to the provisions of this Declaration and to expand the Common Elements.

15.1.1 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Supplemental Maps setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such expansion. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion in whatever order of development Declarant, in its sole discretion, determines. All improvements to be constructed as a result of such expansion shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units and the improvements shall be consistent with the Units hereby submitted to the Declaration in structure, type and quality of construction.

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

15.1.3 Declaration Operative on Expansion Property. Units added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations, upon recording the Supplemental Map(s) and Supplemental Declaration(s) with the Clerk and Recorder. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

No rights or obligations of any character of any owner in Units subject to the Supplemental Declaration and Supplemental Map shall attach until a Supplemental Declaration and Supplemental Map are filed with the Clerk and Recorder annexing the Units constructed in such area.

15.1.4 Effect on Expansion. Upon the construction of additional Units and their



inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Supplemental Map(s) thereof, the Allocated Interests applicable to a Unit shall be as set forth in Section 2.2 above.

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

Section 15.2 Reservation of Rights to Withdraw. Subject to the obligation to subject future phases of the Property to the Declaration by annexation as provided in Section 15.2.1 above, Declarant reserves the right, without consent of any Owner or Mortgagee being required, at any time and from time to time to withdraw from the Project any portion of the Property identified in the Map as "Property Subject to Right to Withdraw." The portion of the Property subject to the right to withdraw may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

Section 15.3 Reservation of Development Rights. Declarant reserves the right, without consent of any Owner or Mortgagee being required, for itself at any time and from time to time to exercise the following development rights within the Project, so long as such rights are exercised in accordance with the Final Site Review approved by the City of Boulder: to create, add to, expand, contract or eliminate Units, Common Elements or Limited Common Elements and to subdivide, resubdivide or combine Units or convert Units into Common Elements and convert Common Elements into Units, to modify or complete construction in connection therewith.

Section 15.4 Right to Transfer to Successor Declarant. Declarant reserves the right to convey, assign, or otherwise transfer Declarant's rights, obligations or interest herein as Declarant to a Successor Declarant by an instrument evidencing the conveyance, assignment or transfer, executed by both the Declarant and the transferee or assignee, recorded with the Clerk and Recorder in the County.

Section 15.5 Other Reserved Rights. Declarant reserves the right for itself, without consent of any Owner or Mortgagee being required, at any time and from time to time to: (a) complete improvements indicated on the plats and Maps and the Final Site Review approved by the City of Boulder, (b) maintain and relocate sales offices, management offices, signs advertising the Project and models, of any size within one or more Units and within the General Common Elements; (c) to appoint or remove any officer of the association or any Executive Board member during the Period of Declarant Control as set forth in Section 5.4 above; (d) to establish, vacate and relocate easements, including specifically, utility easements, access easements, and parking spaces and easements; (e) to amend the Map to (i) insure that the language and all particulars that are used on the Map and contained in the Declaration are



consistent with each other, and (ii) establish certain Common Elements as Limited Common Elements; and (h) to exercise any other Declarant rights or development rights provided for herein.

Section 15.6 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, seven (7) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

ARTICLE 16

ALTERATIONS, ADDITIONS OR IMPROVEMENTS TO COMMON ELEMENTS

Section 16.1 Alterations, Additions or Improvements to Common Elements. Other than alterations, additions or improvements made by Declarant, no alteration, addition or improvement to the Common Elements of any kind (including, without limitation, change in color or texture of exterior surfaces, street numbers, signage, doors or windows or additional landscaping), or which in any manner affect the Common Elements (by way of example and not by way of limitation, addition of air conditioning units, hot tubs, spas, fireplaces, skylights, and moving or removing structural walls), shall be made unless first approved in writing by the Executive Board. All alterations, additions or improvements shall comply with any rules, guidelines or criteria adopted by the Executive Board governing architectural or design considerations, signs, window coverings, lighting or other alterations, additions or improvements. During the period specified in Section 15.5 above, Declarant shall be exempt from any requirement to obtain approval under the provisions of this Article 16. The Executive Board shall respond to any written request for approval of a proposed addition, alteration or improvement within forty-five (45) days after the complete submission of the plans, specifications and other materials and information which the Executive Board may require in conjunction therewith. If the Executive Board fails to approve or disapprove any request within forty-five (45) days after the complete submission of the plans, specifications, materials and other information with respect thereto, the request shall be deemed to have been disapproved by the Executive Board. In the event the Executive Board approves any such alteration, addition or improvement, it shall exercise reasonable business judgment to the end that any modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes.

Section 16.2 Historic Designation. Pursuant to the provisions of Article 15, Declarant may exercise its right to create additional Units in the Project. Two of such additional Units are referred to in that particular Ordinance No. 7471 of the City of Boulder recorded on June 13, 2006 at Reception Number 2783260 in the office of the Clerk and Recorder of Boulder County, Colorado, and which are designated therein as Buildings A and D. Such Buildings A and D are designated as landmarks. Declarant reserves the right to assign Unit numbers to such Buildings A



and D consistent with the numerical designations of Units herein. However, notwithstanding such assignments of Unit numbers, the provisions of Ordinance No. 7471 shall continue to apply to such Units. In addition to approval by the Executive Board as provided in Section 16.1 above, all exterior alterations or additions to such Buildings A and D must be approved by the City of Boulder Landmarks Preservation Advisory Board.

Section 16.3 Governmental Approval. If any application to any governmental authority for a permit to make any such alteration, addition or improvement requires execution by the Association, and provided approval has been given by the Executive Board, then the application shall be executed on behalf of the Association by an authorized officer, without however incurring any liability on the part of the Executive Board, the Association or any of them to any contractor, subcontractor or materialman on account of such alteration, addition or improvement, or to any person having claim for injury to person or damage to property arising therefrom.

Section 16.4 Association Right to Remove Unauthorized Alterations, Additions or Improvements. The Association, upon approval of the Executive Board and after reasonable notice to the Owner of the offending Unit, may remove any alterations, additions or improvements constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration, and the expense therefor shall be paid by the Owner to the Association upon demand, and until paid, shall constitute a Default Assessment enforceable in the same manner as any other unpaid Assessment.

ARTICLE 17

MORTGAGEE'S RIGHTS

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

Section 17.1 Title Taken by First Mortgagee. Any First Mortgagee of record against a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit vests in the First Mortgagee by the conveyance of the Unit in lieu of foreclosure or in accordance with C.R.S. 38-38-501.

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

Section 17.3 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly,



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

Section 17.4 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, and upon payment in advance by such Agency or Mortgagee of the estimated cost as determined by the Board, the Association shall prepare and furnish within ninety days an audited financial statement of the Association for the immediately preceding fiscal year at the expense of such Agency or Mortgagee.

Section 17.5 Notice of Action. Any Eligible Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

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

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

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

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

Section 17.6 Action by Mortgagee. If this Declaration or any Association Documents require the approval of any Agency or Mortgagees then, if any such Agency or Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Agency or Mortgagee receives notice of the proposal (or such longer time as may be set forth in the notice), such Agency or Mortgagee shall be deemed to have approved such proposal provided that the notice was mailed to the Agency or Mortgagee by certified or registered mail, return receipt requested.

Section 17.7 Junior Mortgages. The owner of a Unit may create junior Mortgages on the following conditions: (1) that any such junior Mortgages shall always be subordinate to all of the terms, conditions, covenants, restrictions, uses, limitations, obligations, liens for Common Expenses, and other obligations created by this Declaration and the Bylaws; (2) that the Mortgagee under any junior Mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his right, title and interest in and to the proceeds under all insurance policies upon said premises which insurance policies were effected



and placed upon the mortgaged premises by the Association. Such release shall be furnished forthwith by a junior Mortgagee upon written request of one or more of the members of the Board. If not given, such release may be executed by the Association, as attorney-in-fact for such junior Mortgagee.

ARTICLE 18

DURATION OF COVENANTS AND AMENDMENT

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

Section 18.2 Amendment. This Declaration, or any provision of it, may be amended at any time by approval of Owners to whom at least two-thirds (2/3) of ownership interests in the Common Elements are allocated.

Section 18.3 Amendment for Certain Actions. Notwithstanding anything else contained in this Declaration, and except in case of condemnation or substantial loss to the Units and/or Common Elements, unless at least fifty-one percent (51%) of Eligible Mortgagees and Owners to whom at least two-thirds (2/3) of ownership interests in the Common Elements are allocated have given their prior written approval, the Association may not, except as otherwise provided herein:

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

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

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

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

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

Section 18.4 Approval By the City of Boulder. Pursuant to Paragraph 2(h) of the Interim Covenant entered into between the Declarant and the City of Boulder, dated March 16, 2007, and recorded at Reception Number 2846913 in the Clerk and Records Office, any change



or amendment to Section 2.2 and Section 4.6 of this Declaration must be approved by the City of Boulder.

Section 18.5 Declarant's Right to Amend. Declarant declares and reserves the right to amend this Declaration, the Map, Articles of Incorporation or Bylaws, without the consent of Owners or holders of Mortgages any time within seven (7) years from the date this Declaration is recorded, or before Declarant conveys the last Unit to a purchaser other than Declarant or a Successor Declarant, whichever first occurs, as follows: (a) to make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement; (b) to comply with any requirements of the Act or amendments thereto, or any of the Agencies or the City of Boulder or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages; and (c) to exercise any Development Rights specified in this Declaration.

Section 18.6 Execution of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of Association to the recorded instrument certifying the approval of the amendment by a sufficient number of Owners and Eligible Mortgages, if applicable. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and the Act.

ARTICLE 19

LIMIT ON TIMESHARING

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

ARTICLE 20

DISPUTE RESOLUTION

Section 20.1 Statement of Clarification. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined



herein, that the mandatory dispute resolution provisions contained in this Article are activated, notwithstanding any provision in this Declaration to the Contrary.

Section 20.2 Intent of Article; Applicability of Article; Applicability of Statutes of Limitation.

20.2.1 Agreement to Forego Court Action. Each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) each alleges to have to the procedures set forth in this Article and not to bring an action in court. Further, each Party agrees that the provisions contained in this Article shall be the sole and exclusive remedy that each Party shall have for any Claim. Should any Party commence litigation or any other action against any other Party in violation of the terms of this Article, such Party shall reimburse all costs and expenses, including attorneys fees, incurred by the other Party in seeking the dismissal of such litigation or action, and pursuance of remedies under this Article.

20.2.2 Article Binding on All Owners. By acceptance of a deed for a Unit, each Owner agrees to abide by the terms of this Article.

20.2.3 Statute of Limitations Period. No Claim may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

Section 20.3 Alternative Method for Resolving Disputes. Declarant, the Association, its officers and directors, all Owners, and any other person or entity not otherwise subject to this Declaration but who agrees to submit to this Article (each such person and entity being referred to as a "Party"), agree to encourage the amicable resolution of disputes involving the Project and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article 20, notwithstanding any provision in this Declaration to the contrary.

Section 20.4 Claims. Except as excluded or exempted by the terms of this Article 20, "Claim" means any claim, grievance, controversy or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation, those arising out of or related to (i) the interpretation, application or enforcement of any of the Association Documents or the rights, obligations and duties of any Party under any of the Association Documents; (ii) the design or construction of improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party.

Section 20.5 Exclusions From Claims. Unless all parties thereto otherwise agree, the following claims, grievances, controversies or disputes shall be excluded from the definition of Claims under Section 20.4 above, and shall be excluded from the provisions of this Article 20:



20.5.1. An action by the Association relating to the collection or enforcement of the obligation to pay Assessments or other charges set forth in the Association Documents;

20.5.2. An action by the Association to obtain a temporary restraining order or preliminary injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to enjoin any immediate threat to persons or property, except that, once any temporary restraining order or preliminary injunctive relief is obtained, resolution of any permanent injunction claims shall be through arbitration as set forth herein;

20.5.3. Any action between or among Unit Owners, which does not include the Association as a party, if such action asserts a claim which would constitute a claim for relief independent of the Association Documents;

20.5.4. Any action in which any indispensable party does not include the Association, its officers, directors, or committee members, or a person subject to the Association Documents, or their officers, directors, partners, members, employees and agents; and

20.5.5. Any action to enforce a settlement agreement or arbitration award made under the provisions of this Article 20.

Section 20.6 Dispute Resolution Procedures. The following procedures will be followed in all Claims:

20.6.1. Prior to proceeding with any Claim, the party(s) asserting the Claim ("Claimant") shall give written notice of the Claim to all opposing party(s) ("Respondent"), which notice shall state plainly and concisely: (i) the nature of the claim, including all persons involved and Respondent's role in the Claim; (ii) the legal or contractual basis of the Claim (i.e. the specific authority out of which the Claim arises); and (iii) the specific relief and/or proposed remedy sought.

20.6.2. After the Respondent receives the notice of Claim, the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Such efforts may include inspections of the Claimant's or the Respondent's Unit or the Common Elements for purposes of evaluating any alleged violation. In the exercise of the inspection rights, the party causing the inspection to be made ("Inspecting Party") shall: (a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party or property to be inspected ("Inspected Property"); (b) minimize any disruption or inconvenience to any person who occupies the Inspected Property; (c) keep the Inspected Property clean and remove all debris daily caused by the inspection and located on the Inspected Property; and (d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and



materials from the Inspected Property and repair and replace all damage, and restore the Inspected Property to the condition of the Inspected Property as of the date of the inspection, unless the Inspected Property is to be immediately repaired. Any party may be represented by attorneys and independent consultants to assist in the negotiations and to attend meetings.

20.6.3. If the parties do not resolve the claim through negotiations within forty-five (45) days after submission of the claim to the Respondent, or if any party in good faith determines that negotiations have been and will be to no avail, the Claimant shall have an additional forty-five (45) days to submit the Claim to a mediator for mediation. In the event the parties are unable to agree on a mediator, either party may request that a mediator be appointed by the District Court in Boulder County. The Claim shall be deemed to be submitted upon filing the petition for appointment of the mediator.

20.6.4. If the Claimant fails to submit the claim to mediation within the permitted time, or fails to appear at the mediation, the Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of the Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant.

20.6.5. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If a termination of the mediation occurs without a resolution, the mediator shall issue a written statement advising that the parties are at an impasse.

20.6.6. Unless otherwise agreed, each party shall bear its own costs of the mediation, including attorneys fees, and each party shall share equally all charges of the mediator.

20.6.7. Upon termination of mediation without a resolution, if Claimant desires to pursue the claim, the Claimant shall have an additional forty-five (45) days to initiate final, binding arbitration of the Claim with an arbitrator. If the Claimant fails to submit the claim to arbitration within the permitted time, or fails to appear at the arbitration, the Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of the Claim; provided, nothing herein shall release or discharge Respondent from any liability to any person other than Claimant. In the event the parties are unable to agree on an arbitrator, either party may request that an arbitrator be appointed by the District Court in Boulder County. The Claim shall be deemed to be submitted upon filing the petition for appointment of the arbitrator. Arbitration shall be conducted in accordance with the provisions of Exhibit D attached hereto. Any award rendered may be entered in and enforced by any court having jurisdiction over the claim. The arbitrator shall have authority, in



the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorneys' fees, costs, expenses, arbitrator's fees and administrative fees of the arbitration. Unless otherwise mutually agreed to by the parties to the claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute.

20.6.8. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all parties to the Claim. Any award shall be enforceable in accordance with C.R.S. 13-22-201 et seq., as amended from time to time. The party seeking enforcement shall be entitled to all reasonable attorneys' fees and costs incurred in the enforcement of the award.

Section 20.7 Liability for Failure of Association to Maintain an Action. No director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a claim for relief, mediation, or arbitration for a Claim if the following criteria are satisfied: (i) the director or officer was acting within the scope of his or her duties; (ii) the director or officer was not acting in bad faith; and (iii) the act or omission was not willful, wanton or grossly negligent.

ARTICLE 21

GENERAL PROVISIONS

Section 21.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act. Declarant shall have the right to assign its rights, obligations or interest herein to any person or entity by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 21.2 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or on the third business day after deposit in the U.S. mail, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

Section 21.3 Enforcement. All of the provisions of this Section 21.3 are subject to the provisions of Article 20 above, and shall only apply to those matters not constituting a Claim under the provisions of Article 20 above. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action for any matter not constituting a Claim under Article 20



shall be entitled to reimbursement from the non-prevailing party or parties, for all costs and expenses, including attorney's fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter. The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise its business judgment, and not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) that it is not in the Association's best interests, based on hardship, expense or other reasonable criteria, to pursue enforcement action.

Section 21.4 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 21.5 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control

In Witness Whereof the Declarant has set its hand and seal on the day and year first set forth above.

DECLARANT:

Northern Exposure, LLC, a Colorado limited liability company

By: Philip L. Shull
Philip L. Shull, Manager



STATE OF Colorado)
) ss.
COUNTY OF Boulder)

The foregoing instrument was acknowledged before me this 30th day of January, 2009, by Philip L. Shull, Manager for Northern Exposure, LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 6-13-09

Notary Public

MARCIA SIEMSEN
Notary Public, Boulder County, Colorado
My Commission Expires June 13, 2009



CONSENT TO
CONDOMINIUM DECLARATION OF PARK GABLES

210 Arapahoe LLC ("Lender") as assignee and current beneficiary of that particular Deed of Trust granted by Northern Exposure, LLC in favor of Thomas E. Eldridge and Betty L. Eldridge, dated May 10, 2006 and recorded on May 23, 2006 as Reception No. 2778344 of the records of the Clerk and Recorder of Boulder County, Colorado, upon the subject Property, by virtue of that particular Assignment of Deed of Trust or Mortgage Deed dated June 11, 2008 and recorded June 17, 2008 as Reception No. 2937310 of the records of the Clerk and Recorder of Boulder County, Colorado, hereby consents to the recording and imposition of the covenants affecting the Property contained in the above-stated Condominium Declaration of Park Gables ("Declaration") which shall run with the land and be binding on all owners thereof, and the rights of Lender shall be subordinated thereto, so that the terms of the Declaration shall apply as though recorded prior to the said Deeds of Trust, and the rights under said Deeds of Trust are modified hereby.

Lender:
210 Arapahoe LLC, a Colorado limited liability company

By: Betty L. Eldridge
Title

STATE OF COLORADO)
) ss.
COUNTY OF Boulder)

The foregoing Consent to Condominium Declaration of Park Gables was acknowledged before me this 30th day of January, 2009, by Betty L. Eldridge as Manager of 210 Arapahoe LLC, a Colorado limited liability company. Marcia Siemsen

Witness my hand and official seal.
My commission expires: 6-13-09

Marcia Siemsen
Notary Public

MARCIA SIEMSEN
Notary Public, Boulder County, Colorado
My Commission Expires June 13, 2009





**EXHIBIT A
TO
CONDOMINIUM DECLARATION OF
PARK GABLES**

PROPERTY SUBJECT TO DECLARATION

LEGAL DESCRIPTION:

That portion of the Northwest Quarter of Section 36, Township 1 North, Range 71 West of the 6th P.M., Boulder County, Colorado, described as follows:

Commencing at the intersection of the centerline of Arapahoe Avenue in the City of Boulder, Colorado, and the East line of the West half of said Section 36; thence North 88° 20'00" West, 504.46 feet along the centerline of said Arapahoe Avenue (old County Road No. 255, recorded in Plat Book C, at Page 55 in the Office of the County Commissioners of said Boulder County); thence South 75° 06'00" West, 221.71 feet along said centerline of Arapahoe Avenue; thence South 00° 22'00" West, 31.09 feet to a point on the South line of Arapahoe Avenue; thence South 00° 22'00" West, 203.93 feet; thence North 89° 06'00" East, 100.01 feet; thence South 00° 00'00" West, 91.00 feet; thence North 33° 25'00" West, 52.42 feet; thence North 61° 27'00" West, 42.24 feet; thence North 80° 08'00" West, 40.29 feet; thence South 68° 03'00" West, 46.56 feet; thence North 82° 55'00" West, 65.36 feet; thence North 84° 44'00" West, 66.62 feet; thence South 84° 53'00" West, 33.50 feet to the point of beginning; thence South 84° 53'00" West, 38.76 feet; thence South 84° 22'00" West, 128.80 feet; thence North 77° 34'00" West, 117.07 feet; thence North 00° 22'00" East, 144.87 feet to the Southerly right of way line of said Arapahoe Avenue; thence along said Southerly right of way line the following seven courses:

1. North 89° 06'00" East, 20.40 feet;
2. North 88° 18'00" East, 50.48 feet;
3. North 87° 15'00" East, 50.67 feet;
4. North 85° 45'00" East, 50.72 feet;
5. North 84° 31'00" East, 51.07 feet;
6. North 81° 39'00" East, 51.16 feet;
7. North 80° 06'00" East, 7.93 feet;

Thence South 00° 22'00 West, 175.66 feet to the point of beginning.



**EXHIBIT B
TO
CONDOMINIUM DECLARATION OF
PARK GABLES**

**ALLOCATED INTEREST IN COMMON ELEMENTS, COMMON
EXPENSES AND VOTES**

Unit No.	Unit	A R E A		Common	Common	Voting
		Garage	Total	Elements	Expenses	
				%	%	%
218	1953	795	2748	24.15%	24.15%	24.15%
220	2140	800	2940	25.83%	25.83%	25.83%
228	2140	816	2956	25.98%	25.98%	25.98%
230	1949	787	<u>2736</u>	<u>24.04%</u>	<u>24.04%</u>	<u>24.04%</u>
Total			11380	100.00%	100.00%	100.00%



**EXHIBIT C
TO
CONDOMINIUM DECLARATION OF
PARK GABLES**

EASEMENTS AND LICENSES ENCUMBERING THE PROJECT

1. Right of way, whether in fee simple or easement only, for the Anderson Ditch over, upon, along, across and through the Southerly portion of the land, and any and all rights appurtenant thereto and/or associated therewith.
2. Water line as made reference to in the Warranty Deed from A. E. Heaton and C. V. Moore to Mary L. Seibert recorded March 16, 1936 in Book 623 at Page 173 to the extent that same may affect subject land.
3. Terms, conditions, provisions, agreements and obligations contained in the Agreement executed by Lee P. Witt and Irene Witt and recorded September 19, 1962 in Book 1249 at Page 451.
4. Terms, conditions, provisions, agreements and obligations specified under the Annexation Agreement by and between the City of Boulder, a Colorado home rule city and Thomas E. and Betty L. Eldridge recorded August 18, 2005 as Reception No. 2714250.
5. Terms, conditions, provisions, agreements and obligations specified under the Development Agreement by and between Thomas E. and Betty L. Eldridge and the City of Boulder, a Colorado municipal corporation recorded March 28, 2006 as Reception No. 2765943.
6. Terms, conditions, provisions, agreements and obligations specified under Ordinance No. 7471 of the City of Boulder, Colorado recorded June 13, 2006 as Reception No. 2783260.
7. Terms, conditions, provisions, agreements and obligations specified under the Agreement by and between The Anderson Ditch Company, a Colorado Nonprofit Corporation and Northern Exposure, LLC, a Colorado limited liability company recorded February 20, 2007 as Reception No. 2837388.
8. Terms, conditions, provisions, agreements and obligations specified under the Development Agreement by and between Northern Exposure, LLC, a Colorado limited liability company and the City of Boulder, Colorado, a Colorado municipal corporation recorded March 28, 2007 as Reception No. 2845286.
9. Terms, conditions, provisions, agreements and obligations specified under the Permanently Affordable Condominium Unit Interim Covenant by and between Northern Exposure, LLC, a Colorado limited liability company and the City of Boulder, a Colorado municipal corporation recorded April 3, 2007 as Reception No. 2846913.
10. Easements for utilities and incidental purposes granted to the City of Boulder, by the



instrument recorded June 22, 2006 as Reception No. 2864311 upon the terms and conditions set forth in the instrument, as more fully described therein.

11. An easement for utility lines and incidental purposes granted to Public Service Company of Colorado, by the instrument recorded July 3, 2007 as Reception No. 2866906, as more fully described therein

12. Terms, conditions, provisions, agreements and obligations specified under the Order for Conditional Inclusion of Lands Within the Boundaries of the Municipal Sub district, Northern Colorado Water Conservancy District recorded July 11, 2007 as Reception No. 2868520.

13. An easement for a sidewalk and incidental purposes granted to the City of Boulder, by the instrument recorded August 8, 2007 as Reception No. 2875058, as more fully described therein.

14. An easement utilities and incidental purposes as granted to the City of Boulder, by the instrument recorded August 8, 2007 as Reception No. 2875059, as more fully described therein.

15. A blanket easement for telecommunications facilities, electric and gas facilities and incidental purposes granted to Qwest Corporation, by the instrument recorded August 15, 2007 as Reception No. 2876254, as more fully set forth therein.

16. All easements, rights of way and licenses created or depicted on the site plan of the Project, or as created in this Declaration, depicted on the Condominium Map of Park Gables, or implied as necessary for any party to exercise rights under any of the foregoing described documents or to provide services to the Project.



**EXHIBIT D
TO
CONDOMINIUM DECLARATION OF
PARK GABLES**

ARBITRATION PROCEDURES

1. No person shall serve as the arbitrator where that person has any financial or personal interest in the result of the arbitration or any family, social or significant professional acquaintance with any other party to the arbitration. Any person designated as an arbitrator shall immediately disclose in writing to all parties any circumstance likely to affect the appearance of impartiality, including any bias or financial or personal interest in the outcome of the arbitration (“Arbitrator Disclosure”). If any party objects to the service of any arbitrator within 14 days after receipt of that Arbitrator's Disclosure, such arbitrator shall be replaced in the same manner in which that arbitrator was selected.

2. The arbitrator shall fix the date, time and place for the hearing. The arbitration proceedings shall be conducted in Boulder County, Colorado unless otherwise agreed by the parties.

3. No formal discovery shall be conducted in the absence of an order of the arbitrator or express written agreement among all the parties.

4. Unless directed by the arbitrator, there will be no post-hearing briefs.

5. The arbitration award shall address each specific Claim to be resolved in the arbitration, provide a summary of the reasons therefore and the relief granted, and be rendered promptly after the close of the hearing and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The award shall be in writing and shall be signed by the arbitrator.

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