

insured parties. Such insurance shall be in such amounts as the Association may from time to time determine, but not in an amount less than. One Million Dollars (\$1,000,000.00) per occurrence covering claims for personal injury, bodily injury and/or for property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles (whether owned, non-owned or hired) on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Common Elements and the Condominium Units by the Association, its officers, directors, agents, employees, representatives and the Owners, and any contractual liability.

C. Workmen's Compensation. Workmen's Compensation, or similar insurance with respect to its employees in the amounts and forms sufficient to meet the requirements of law, shall be acquired by the Association.

D. Directors' and Officers' Personal Liability Insurance. To the extent obtainable, appropriate non-profit organization coverage of directors' and officers' liability insurance shall be obtained by the Association to protect the officers, directors, employees, volunteers, committee members or others acting at the direction of the Board from liability in relation to their duties and responsibilities in acting as such officers, directors, employees, volunteers, committee members or others acting at the direction of the Board on behalf of the Association, and shall cover the Association as a corporate entity. If the Association has employees, such coverage shall include employment practices liability.

E. Fidelity Insurance. The Association shall purchase, in an amount equal to the maximum amount of funds in the Association's custody at any one time, but not less than the greater of any sum required under C.R.S. 38-33.3-306(3) or the sum of three months' assessments on the entire Project, plus reserves, blanket fidelity insurance covering losses resulting from dishonest or fraudulent acts or omissions committed by the Association's directors, managers, trustees, officers, employees, volunteers, or anyone who manages the funds collected and held for the benefit of the Owners. Such policy shall also cover destruction or disappearance of money or securities and forgery. Said policy shall cover any person or entity handling funds of the Association, including, but not limited to, any person employed as an independent contractor for the purpose of managing the Association and any employees of such professional managers, which may also be covered by its own fidelity bond and submit evidence thereof to the Association. Such fidelity coverage or bonds shall name the Association as the named insured and obligee and shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

F. Flood Insurance. If the Project is located in an area identified by the Secretary of the U.S. Department of Housing and Urban Development or the Director of the Federal Emergency Management Agency as an area having special flood hazards and the sale of Flood Insurance has been made available under the National Flood Insurance Act of 1968, a "blanket" policy of flood insurance on the Project in an amount which is the lesser of the maximum amount of insurance available under that Act or one hundred percent (100%) of the current replacement cost of all Buildings and other insurable property located in the flood hazard area.

G. Other Insurance. The Association may obtain such other insurance as the Board shall determine from time to time to be desirable, with respect to the Association's responsibilities and duties. All insurance shall also comply with the requirements and provisions of the CCIOA.

H. Notice of Unavailability. If any insurance described in this Declaration is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees as provided herein.

Section 13.2 Insurance Policies.

A. Policy Provisions. All insurance shall be carried in blanket form naming the Association as insured, as trustee and attorney-in-fact pursuant to Articles XIV and XV hereof for all of the Owners and First Mortgagees as their interests may appear, in the loss payable clause and otherwise, and shall identify the interest of each Owner (Owner's name and Unit number designation) and the First Mortgagee. Insurance policies carried pursuant to this Declaration shall provide that:

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

(b) The insurer waives its rights to subrogation under the policy against the Association, its officers and directors;

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

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides secondary insurance. Also all policies of insurance to the extent obtainable shall contain the standard mortgage clause.

B. Insurer. An insurer that has issued an insurance policy for the insurance described in this Declaration shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses. All insurance policies shall be written by companies licensed to do business in the State of Colorado and having an A.M. Best's Insurance Report rating of B/VI or better.

C. Premiums. Premiums upon insurance policies purchased by the Board and any other expenses connected with acquiring such insurance shall be part of the Common Expenses included in the annual assessments. The policy shall provide that no assessment may be made against First Mortgagees and that any assessment for insurance premiums made against others shall not become a lien on the Condominium Units superior to the First Mortgage.

D. Deductibles. Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and as are consistent with the requirements of First Mortgagees and any secondary lenders purchasing First Mortgages. Any loss falling within the deductible portion of the policy shall be borne by the Association, except as otherwise provided in this Declaration or as determined by the Board.

E. Claims Procedures. 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 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 Owner a pro rata share of any deductible paid by the Association.

Section 13.3 Severability. All policies of insurance shall contain a severability of interest endorsement providing that the insurance thereunder shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or noncompliance of any provision of such policy, including payment of the insurance premiums applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but that the insurance under any such policy, as to the interests of all other insured Owners not guilty of any such act or omission, shall not be invalidated or suspended and shall remain in full force and effect.

Section 13.4 Proceeds. All insurance policies shall contain a standard noncontributory mortgagee clause in favor of each First Mortgagee of a Condominium Unit, which has given notice of its lien to the Association and shall provide that they are for the benefit of the Association, the Owners and their First Mortgagees as their interests may appear and shall provide that all proceeds covering losses shall be paid to the Association in trust for the purposes set out herein. The duty of the Association shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Owners and First Mortgagees as provided herein. The Board may disburse the net proceeds of all insurance policies arising out of such casualty to the contractors engaged in the repair and reconstruction in appropriate progress payments.

Section 13.5 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board to ascertain that the coverage provided by such policies adequately meets the requirements of this Declaration and covers such other risks

as are customarily covered with respect to Condominium projects similar in construction, location and use. Prior to obtaining any policy of fire insurance or renewal thereof, the Board or the Managing Agent may obtain a written valuation from a duly qualified real estate, insurance appraiser or other person knowledgeable of replacement value of the entire Project, without deduction for depreciation, for the purpose of determining the amount of the insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such valuation upon request.

Section 13.6 Notice to First Mortgagees. Provided that a first Mortgagee has, in writing, requested the following information with respect to a Condominium Unit upon which said First Mortgagee holds the First Mortgage, and has furnished the Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage in excess of Ten Thousand Dollars (\$10,000.00) or destruction of: (a) the Condominium Unit on which such First Mortgagee holds the First Mortgage, and/or (b) the Common Elements, or in the event of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, then timely written notice of any such matters shall be given by the Association to such First Mortgagee.

Section 13.7 Owners' Insurance. Owners are required to obtain their own insurance to cover their Unit. An insurance policy issued to the Association does not remove that requirement. It shall be required that each Owner, and at his own expense, make arrangements in regard to title insurance on his Condominium Unit, and obtain and maintain all insurance on his Unit and personal property, including without limitation, wallboard, paint, wall coverings, non-bearing walls, exterior and interior doors, windows, trim, furniture, carpet, draperies, oven, range, refrigerator, wallpaper, disposals, appliances, electrical fixtures and wiring, plumbing fixtures and piping and furnishings, and for public liability insurance covering his individual Unit, and, in addition, the Owner may obtain such other and additional insurance coverage on and in relation to his Condominium Unit as he, in his sole determination, shall conclude to as desirable; provided, however, that none of such insurance shall affect the coverage obtained by the Association, nor cause the diminution or termination thereof. Any such insurance obtained by an Owner shall waive the particular insurance company's right of subrogation against the Association. Neither the Association nor the Declarant shall have any responsibility regarding the obtaining or continuation of any such insurance. If at any time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be secondary insurance to that of the Owner.

XIV

ASSOCIATION AS ATTORNEY-IN-FACT

This Declaration does hereby make mandatory the irrevocable appointment of the Association as insurance trustee, pursuant to C.R.S. 38-33.3-313(5) and (9) and under this Declaration, and as attorney in-fact to deal with the Project in the event of its destruction, damage, obsolescence,

condemnation, liquidation of all or a part of the Project, or termination of the Project, including without limitation the repair, replacement and improvement of any Units, Buildings, Common Elements or other portion of the Project which have been so destroyed, damaged, condemned or becomes obsolete. Title to any Condominium Unit is, declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of representing the Owners in any proceedings, negotiations, settlements or agreements related thereto and dealing with the Project upon its damage, destruction, obsolescence or condemnation as is hereinafter provided, and any proceeds therefrom shall be payable to the Association for the benefit of the Owners and their First Mortgagees. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary or its duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest, of an Owner which may be necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence, or condemnation shall be appointed. Said appointment must be approved by the Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more of the Common Elements and at least sixty-seven percent (67%) of the First Mortgagees of the Condominium Units. Notwithstanding any contrary provision of this Condominium Declaration, the Association's Articles of Incorporation and Bylaws, no Owner or any other party, shall have priority over any rights of the First Mortgagee of the Condominium Unit pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses or a taking of Condominium Units and/or Common Elements.

XV

DESTRUCTION, DAMAGE OR OBSOLESCENCE

Section 15.1 Damage or Destruction. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme to the extent then reasonably and economically feasible. Any portion of the Project for which insurance is required under this Declaration and available to the Association, and which is damaged or destroyed must be repaired or replaced promptly by the Association pursuant to this Declaration and C.R.S. 38-33.3-313, unless notwithstanding any contrary provision:

- A. The Project is terminated, as provided in this Declaration;

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

C. Eighty percent (80%) of the Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

D. Prior to the conveyance of any Unit to a person other than the Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Project rightfully demands all or a substantial part of the insurance proceeds.

Section 15.2 Insurance Proceeds Sufficient. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvement(s) shall be promptly repaired and reconstructed. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and restoration of the improvement(s). Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction. The Association, Owners, and lien holders are not entitled to receive payment of any portion of the insurance proceeds unless there is a surplus of proceeds after the Project has been completely repaired or restored or the Project is terminated.

Section 15.3 Insurance Proceeds Insufficient.

A. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is not more than sixty-seven percent (67%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units. Such special assessments shall be a Common Expense and made according to each Owner's Proportionate Interest and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power as attorney-in-fact, to cause the repair, replacement or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Condominium Unit and may be enforced and collected as is provided in Article XI. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, late charge, interest at a rate of eighteen percent (18%) per annum, on the amount of the assessment and all reasonable attorneys' fees. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this Section. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (1) For payment of the balance of the lien of any First Mortgagee;
- (2) For payment of taxes and special assessments liens in favor of any assessing entity and the customary expenses of sale;
- (3) For payment of unpaid assessments levied by the Association under this Article and Article XI hereof and all costs, expenses and fees incurred by the Association;
- (4) For payment of junior liens and encumbrances in the order of and to the extent of (their priority; and
- (5) The balance remaining, if any, shall be paid to the Owner of the Condominium Unit.

B. If the insurance proceeds are insufficient to repair and reconstruct the improvement(s), and if such damage is more than sixty-seven percent (67%) of the total replacement cost of all of the Condominium Units in this Project, not including land, such damage or destruction shall be promptly repaired and reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment to be made against all of the Owners and their Condominium Units, provided, however, that Owners representing an aggregate Proportionate Interest of eighty percent (80%), including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, or more of the Common Elements and at least seventy-five percent (75%) of the First Mortgagees of record may agree not to repair or reconstruct the improvements; and in such event, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire Project shall be sold by the Association pursuant to the provisions of this Section, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, Articles of Incorporation and Bylaws. Any termination of this Condominium Project shall also comply with C.R.S. 38-33.3-218. Assessments under Article XI hereof shall not be abated during the period prior to sale. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association according to each Owner's Proportionate Interest, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Condominium Units. Each such account shall be in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of each of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any First Mortgagee encumbering the Condominium Unit represented by such separate account. Thereafter, each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire Property. Such apportionment shall be based upon each Owner's Proportionate Interest. The total funds of each account shall be used and disbursed, without contribution, from one account to another by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subsections (1) through (5) of Section 15.3(A).

C. Notwithstanding any provisions of this Declaration, if the entire Project is 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 attributable to Units and Limited Common Elements that are not rebuilt must be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, or to lien holders, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Proportionate Interest of all the Units.

Section 15.4 Obsolescence.

A. The Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal and reconstruction is adopted, notice of such plans shall be recorded, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the Condominium Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Condominium Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eighteen percent (18%) per annum, and all reasonable attorneys' fees. The proceeds derived from the sale of such Condominium Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in subsection (1) through (5) of this Section 15.3(A)

B. The Owners representing an aggregate Proportionate Interest of sixty-seven percent (67%) or more, may agree that the Condominium Units are obsolete and that the same should be sold. Such plan or agreement must have the approval of sixty-seven percent (67%) of the First Mortgagees of the Condominium Units. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire project shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles of Incorporation and the Bylaws. Any termination of this Condominium Project shall also comply with C.R.S. 38-33.3-218. The sale proceeds shall be apportioned among the Owners on the basis of each Owner's Proportionate Interest and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall be in the name of the Association and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in subsections (1) through (5) of Section 15.3(A).

XVI

CONDEMNATION

Section 16.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Condominium Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Article shall apply, subject to C.R.S. 38-33.3-107:

A. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award", shall be payable to the Association.

B. Complete Taking.

(1) In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Owner's Proportionate Interest, provided, however, that if a standard different from the value of the Property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

(2) On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled, Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 15.3(A)(1) through (5).

C. Partial Taking. In the event that less than the entire Condominium Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts among the Owners as follows: (a) the total amount allocated to the taking of or injury to the Common Elements shall be apportioned among the Owners on the basis of each Owner's Proportionate Interest; (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (c) the respective amounts allocated to the taking of or injury to a particular Unit and to the improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved; and (d) the total amount allocated to consequential damages and any other taking or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the

Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner provided in Section 15.3(A)(1) through (5).

D. The Association shall timely notify each First Mortgagee of any Condominium Unit of the commencement of the condemnation proceedings or eminent domain proceedings and shall notify said mortgagees in the event of the taking of all or any part of the Common Elements, if the value of the Common Elements taken exceeds Ten Thousand Dollars (\$10,000.00).

Section 16.2 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining common elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners and of First Mortgagees of remaining units for amendment of this Declaration as provided in Article XVIII.

Section 16.3 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XV.

XVII

EXPANSION OF PROJECT

Section 17.1 Declarant's Reserved Right to Expand. Notwithstanding any contrary provisions of this Declaration, the Declarant shall have and hereby specifically reserves the right until seven (7) years from the date of recording this Declaration, without the approval of the Owners or First Mortgagees, except as provided in Section 9.6, to annex to the Property from time to time any contiguous portion or portions of the Expansion Property described in Exhibit "C" attached hereto and incorporated herein by this reference, and to submit such additional property and improvements thereon, including without limitation the Condominium Units and Common Elements, to the terms and provisions of this Declaration. Any Buildings and Condominium Units which are constructed by Declarant on any part of the Expansion Property, which is annexed hereby, shall be substantially completed prior to annexation and substantially comparable in style, floor plan, size, quality and cost to the Condominium Buildings and Condominium Units existing on the Property at the date of such annexation as determined by the Declarant in its sole discretion but subject to approval by the Department of Veterans Affairs or the Federal Housing Administration pursuant to Section 9.6 hereof, if applicable; Declarant reserves the right to change plans and specifications, model designs, construction materials, landscaping, colors, drainage, floor plans and size of Units in its sole discretion and all Owners consent and agree to such changes. By accepting a deed to a Condominium Unit, each Owner hereby grants to Declarant a right to expand the project and to allocate Limited Common Elements, and to exercise all rights granted or reserved to Declarant under this Declaration,

including without limitation, the right to modify the Owner's Proportionate Interest accordingly, as hereinafter set forth in this Article. Notwithstanding any contrary provision, any expansion hereunder shall also comply with C.R.S. 38-33.3-209 and 210.

Section 17.2 Documents for Annexation. For any annexation by the Declarant pursuant to the provisions of this Article, Declarant shall cause to be prepared a supplemental Condominium Map of such annexed property and an Amendment/Supplement to this Declaration, which shall contain an identification of the Condominium Units in the Project after expansion and the reallocation of the Proportionate Interests. The amendment/supplement must describe any Common Elements and any Limited Common Elements thereby created and, in the case of Limited Common Elements, designate the unit to which each is allocated to the extent required by C.R.S. 38-33.3-208. These documents shall be filed in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, prior to conveyance of the first Condominium Unit in such annexed property. The expansion may be accomplished in "phases" by successive amendments/supplements. At such time as the Declarant determines that the Project is complete, the Declarant shall record a Certificate of Completion with said Clerk and Recorder.

Section 17.3 Modification of Owners' Proportionate Interests. Upon the Declarant's annexation of any part of the Expansion Property to this Condominium Declaration and the recording of the annexation documents, each Owner's Proportionate Share and Proportionate Interest in the Common Elements, including those included in the Project prior to annexation and those added by the annexation, shall be automatically adjusted for all Condominium Units, including those in the Project before and after annexation. The basis for that adjustment shall be a determination made pursuant to Section 3.1 of this Declaration. Such adjustment of Proportionate Share and Proportionate Interest in the Common Elements appurtenant to a Condominium Unit shall be automatic upon recording of such documents, and no further documentation need be filed of record or further action need be taken by the Declarant, any Owner or any First Mortgagee to reflect such Modification in Proportionate Share and Proportionate Interest. The maximum number of total Condominium Units which may be contained in the Project after annexation is completed shall not exceed one hundred forty (140) Condominium Units.

Section 17.4 Assessments. Notwithstanding any such annexation and such adjustment, each Owner (regardless of whether such Owner is the owner of a Condominium Unit enumerated in Exhibit "B" attached hereto or is the owner of a Condominium Unit contained in an annexation) shall be fully liable, in accordance with Article XI hereof, with respect to his obligation for the payment of assessments, charges, fines, fees and other sums to the Association, including without limitation, the expenses for the new General and Limited Common Elements. Assessments shall not commence within any phase until the first day of the first month following the first conveyance of any Condominium Unit therein from the Declarant to the first Owner thereof.

Section 17.5 New Members Subject to Declaration. Upon the recording of the annexation documents, each Owner of a Condominium Unit located upon the annexed property shall automatically become a member of the Association, and that Owner and his Condominium Unit shall be subject to covenants, terms and provisions of this Declaration, including without

limitation, the assessment and voting provisions hereof, together with the Articles of Incorporation, the Bylaws, and any Rules then in effect. Similarly, the definitions used in this Declaration shall be automatically expanded to encompass and refer to the Project as so expanded; for example, "Common Elements" shall mean the Common Elements originally described herein together with any Common Elements added thereto by annexation.

Section 17.6 Declarant's Right Not to Expand Project. The Declarant shall have the absolute right not to annex all or any part of the Expansion Property and may record any documentation necessary to demonstrate conclusively such non-annexation. The Declarant alone shall be liable for all expenses of the Expansion Property unless and until annexed hereunder, and shall be entitled to any income and proceeds therefrom. Any part of the Expansion Property, which has not been annexed to the Project as provided herein, shall not be subject in any way whatsoever to the covenants, terms or provisions of this Declaration, except for any rights or easements reserved herein for the benefit of such property. Unless and until annexation, any part of the Expansion Property may be conveyed by the Declarant free and clear of this Declaration, except to confer easements and rights reserved hereunder by Declarant, and any such conveyance shall terminate the application of this Declaration as to said part of the Expansion Property. The Declarant's annexation and development rights under the Declaration may be exercised at different times and as to different portions of the Property or Expansion Property, and so no assurances are made hereby regarding the boundaries of any portion of real property which may be annexed hereunder nor the order in which said portion may be annexed. If the Declarant exercises any right to annex additional portions or other development right, the Declarant is not required to exercise any development rights as to any and all portions of the remaining Property or Expansion Property. Any portion of the Property of Expansion Property may be designated as General or Limited Elements as shown by the plat or map which has been or will be recorded regarding that portion.

XVIII

GENERAL PROVISIONS

Section 18.1 Amendment.

A. The covenants and restrictions of this Declaration and the separate Condominium estates created hereby shall run with and bind the land, until such time as this Declaration is terminated or revoked in the manner herein provided.

B. Except as is otherwise provided in Articles XV and XVI, this Declaration shall not be revoked or terminated unless all of the Owners and all First Mortgagees have voted or agreed to such termination or revocation; such termination and revocation shall also comply with C.R.S. 38-33.3-218. This Declaration shall not be amended or modified unless the Owners having at least sixty-seven percent (67%) of the Proportionate Interests and the First Mortgagees of at least sixty-seven percent (67%) of the Condominium Units have voted or agreed to such amendment, provided however, notwithstanding the foregoing, (a) that any section in this Declaration which requires a particular percentage of Owners and/or Mortgagees may be amended only by written consent of that percentage

of those parties; (b) that this Section, Sections 7.13, 7.15, 8.3, 9.6, 18.13, and Article XVII, and any other section or provision requiring the Declarant's consent or providing rights to the Declarant, may only be amended, terminated, or modified with the prior written consent of the Declarant so long as the Declarant owns any Unit or any real property in the Property or Expansion Property; (c) that this section may be amended by an instrument signed by Owners of at least ninety percent (90%) of the Condominium Units, and one hundred percent (100%) of all First Mortgagees who have given the Association written notice of their lien; (d) an Owner's Proportionate Interest in the Common Elements appurtenant to each Unit as set forth in Exhibit "B" thereto, shall have a permanent character and shall not be altered without the written consent of all of the Owners and all of the First Mortgagees of Condominium Units, except as provided in Article XVII regarding expansion of the Project; and (e) that the Declarant hereby reserves the right, until the Period of Declarant Control is terminated, and subject to Article IX, Section 9.5, but without the vote of the Owners or the First Mortgagees, to make such amendments to this Declaration, the Articles of Incorporation, and/or the Bylaws, as may be permitted to Declarant by this Declaration or by the CCIOA or as may be necessary to correct clerical, typographical or technical errors in said documents or as may be approved in writing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property and/or Expansion Property, and each Owner and Mortgagee by accepting a deed or other instrument to this Condominium Unit appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's name and Mortgagee's name and recording any such amendments to this Declaration, and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to make, execute and record any such amendments.

C. The consent of any junior Mortgagee shall not be required under the provisions of this Article. In determining whether the appropriate percentage of Mortgagee approval is obtained, each First Mortgagee shall have one (1) vote for each First Mortgage owned.

D. To be effective, all amendments to this Declaration must be recorded in the office of the Clerk and Recorder of the county in which the Property is located, and an amendment must be indexed in the grantee's index in the name of the common interest community and the Association and in the grantor's index in the name of each person executing the amendment. The amendment shall be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility as set forth in C.R.S. 38-33.3-217(6).

Section 18.2 Acceptance of Provisions of all Documents/Waiver of Homestead. The conveyance, sale, transfer, lease or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the waiver of any homestead rights and any exemptions under any state or federal law and shall be binding upon each grantee and Mortgagee without the necessity of

inclusion of such an express provision in the instrument of conveyance or encumbrance.

Section 18.3 Severability. The provisions of this Declaration shall be deemed to be independent and severable and if any of the provisions of this Declaration or any clause, paragraph, sentence, phrase or word, or the application thereof, in any circumstances be invalidated by judgment or court order, such invalidity shall not affect the validity of the remainder of the Declaration, which other provisions shall remain in full force and effect.

Section 18.4 Conflict. In the event there should be any conflict between the provisions of this Declaration and the Articles of Incorporation of the Association and any Bylaws or Rules or regulations of the Association, the provisions of this Declaration shall be deemed controlling. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control. The provisions of this Declaration shall be in addition to and supplemental to the CCIOA and to all other provisions of law.

Section 18.5 Notice. Each Owner shall register his mailing address with the Association, and except for monthly statements and other routine notices of matters affecting the Property, which may be given to the Owners by the Association or other Owners by use of regular mail to the registered address, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the registered agent of the Association as his address filed with the Secretary of State of the State of Colorado, together with copy addressed to the President of the Association at his registered address.

Section 18.6 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

Section 18.7 Captions. The captions to the Articles and Sections are inserted herein only as a matter of convenience and for reference, and are, in no way to be construed to define, limit or otherwise describe the scope of the Declaration nor the intent of any provisions hereof.

Section 18.8 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, Association and each owner, and its heirs, personal representatives, successors and assigns of each of them. The Declarant may assign its rights and authority hereunder, in whole or in part, by express written assignment, duly recorded.

Section 18.9 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 18.10 Governing Law. This Declaration of Covenants, Conditions and Restrictions shall be governed by, and construed in accordance with, the laws of the State of

Colorado.

Section 18.11 Remedies Cumulative. The rights and remedies of the Association are distinct and cumulative to any other right or remedy hereunder or afforded by law or equity and may be exercised concurrently, independently or successively without effect or impairment upon one another.

Section 18.12 Implied Approval by Mortgagees. Notwithstanding any provision of this Declaration, any matter requiring Mortgagee approval will be assumed when that Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Any First Mortgagee shall be given notice of any proposed action requiring its consent, as long as the First Mortgagor has sent a written request to the Association, stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guarantees) the Mortgage.

Section 18.13 Development Rights and Special Declarant Rights. In addition and supplement to all rights reserved by the Declarant under this Declaration, the Declarant reserves the following development rights and other special Declarant rights for a period of seven (7) years from the recording of this Declaration, or upon Declarant's sale of the last Condominium Unit within the Property or Expansion Property, whichever occurs first:

- A. The right to complete or make improvements indicated on the plats or maps;
- B. The right to maintain sales offices, management offices and models in units or on the Common Elements;
- C. The right to maintain signs on the Property and to advertise the Project;
- D. The right to use and permit others to use private streets, recreational
- E. Amenities, parking and easements through the Common Elements as may be reasonably necessary for the purpose of making improvements within the Property or Expansion Property or performing other rights under the Declaration or using or occupying apartments in the Expansion Property.
- F. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes, including but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Project.
- G. The right to enter into, establish, execute, amend, and otherwise deal with contracts, assignments, and agreements for the use, lease, repair, maintenance or regulation or parking and/or recreational facilities, which may or may not be a part of the Project, for the benefit of the Owners

and/or the Association.

G. The right to appoint or remove an officer of the Association or any Director of the Association during the Period of Declarant Control.

H. The right to amend the Declaration in connection with the exercise of any development rights or other rights.

I. The right to amend the Map in connection with the exercise of any development rights or other rights.

J. The right to transfer, assign or delegate any right reserved or granted by this Declaration, law or statute to any person or party to the fullest extent permitted under this Declaration, law or statute.

K. Any and all other rights of Declarant as set forth in this Declaration, by law or statute; in the event of any conflict, the broadest right reserved by Declarant shall prevail.

Any and all rights of Declarant shall be fully assignable and transferable as allowed by law and statute, including without limitation, the statutory provisions of the CCIOA. The consent of Owners or First Mortgagees shall not be required for the exercise or transfer of any reserved rights, and the Declarant, its successors or assigns may proceed without limitation at its sole option. The Declarant, its successors or assigns may exercise any rights under this Declaration on all or any portion of the Property or Expansion Property or both, in whatever order determined. The Declarant, its successors or assigns shall not be obligated to exercise any such rights or to expand the Project, except as it determines in its sole discretion.

