

such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, an Owner shall have the absolute right to lease his Condominium Unit for private residential, living or sleeping purposes and pursuant to the following conditions: (a) the initial term of any lease or other tenancy shall be at least six (6) months in duration; (b) no Owner may lease less than his entire Condominium Unit, (c) all leases shall be in writing, and (d) all leases shall provide that the terms of the Lease, and Lessee's occupancy of the Condominium Unit, shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association and the Rules of the Board and that any failure by the lessee to comply therewith shall be a default under the lease. The Board may require that an Owner use an approved form of lease, submit a copy of each lease to the Board, and enforce it against his tenant.

**Section 7.10 Parking.** There shall be no parking of automobiles, trucks or vehicles of any type upon any part of the Project, including without limitation any private streets, except as assigned by the Declarant or as shown for parking on the Condominium Map or as provided in writing by the Association's Board; violation of this provision shall permit the Board or any owner to remove the offending vehicle at the expense of the owner thereof. No commercial vehicles, campers, trailers, or vans shall be stored on or otherwise parked on any part or any road within the Project except when temporarily engaged in transport or unless parked in a carport, garage or area designated for such purpose by the Board. For the purpose of this Section, a 3/4-ton or smaller vehicle, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or truck. Recreational vehicles or similar vehicles may not be parked in the Property unless the Board designates a specific area for such parking. No mechanical work shall be performed upon any vehicle located upon the Property unless permitted by the Rules of the Board. The Board may regulate or restrict parking and traffic by Rules, signs, permits or other means. The Board may designate certain unassigned parking spaces or parking areas for the use of individual owners, Guests and visitors; any parking so designated shall not be used by any other persons.

**Section 7.11 Abandoned or Junk Vehicles.** No abandoned or junk vehicles or parts thereof shall be stored or parked upon any part of the Project, including but not limited to any residential street, alley or way of access within or adjacent to the Project, but excluding any area designated for such purpose by the Board. In the event that the Board shall determine in its sole discretion that a vehicle is an abandoned or junk vehicle, then a written notice describing the vehicle will be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or will be conspicuously placed on the unused vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or junk vehicle is not removed within 72 hours thereafter, the Board shall have the right to remove the vehicle at the sole expense of the owner thereof. For the purpose of this Section, an "abandoned vehicle" is any automobile, truck, motorcycle, motor bike, boat, trailer, camper, motor home, house trailer or other similar vehicle which has not been driven under its own propulsion, or has not been moved for a period of fifteen (15) days or longer, as determined by the Board in its sole discretion. For the purpose of this section, a "junk" vehicle shall be defined in the Association's Rules, as determined by the Board in its sole discretion.

**Section 7.12 Signs and Advertising.** No signs, advertising, displays, billboards, unsightly objects or nuisances shall be placed, erected or permitted to remain in or on any



F. EACH OWNER FURTHER COVENANTS AND AGREES THAT NO REPRESENTATION, PROMISE OR WARRANTY, HAS BEEN MADE BY DECLARANT, ITS AGENTS, EMPLOYEES, CONTRACTORS, BROKERS, MANAGERS, AND THE SUCCESSORS AND ASSIGNS OF EACH OF THEM (HEREAFTER COLLECTIVELY CALLED THE "RELEASED PARTIES"), REGARDING THE DEVELOPMENT OF ADJACENT PROPERTIES, THE INVESTMENT POTENTIAL OF THE UNIT, ANY ECONOMIC BENEFITS TO THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, TO BE DERIVED FROM THE MANAGERIAL OR OTHER EFFORTS OF THE RELEASED PARTIES, OR ANY OTHER THIRD PARTY DESIGNATED OR ARRANGED BY THE DECLARANT AND/OR OTHER RELEASED PARTIES, RELATED TO THE OWNERSHIP OR RENTAL OF THE UNIT, OR REGARDING THE CONTINUED EXISTENCE OF ANY VIEW FROM THE UNIT. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT DECLARANT AND/OR OTHER RELEASED PARTIES ARE UNDER NO OBLIGATION WITH RESPECT TO FUTURE PLANS, ZONING OR DEVELOPMENT OF ADDITIONAL PROPERTY IN THE AREA. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, UNDERSTAND THAT THE SQUARE FOOTAGES, SIZES AND TYPE OF UNITS HAVE BEEN SET FORTH AT THE SOLE DISCRETION OF THE DECLARANT AND/OR OTHER RELEASED PARTIES, AND THAT THE SALES PRICES MAY DECREASE OR INCREASE AT THE SOLE DISCRETION OF THE DECLARANT.

G. BY ACQUIRING TITLE TO A UNIT, THE OWNERS, THEIRS HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE DECLARANT AND/OR OTHER RELEASED PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE, INCLUDING WITHOUT LIMITATION ANY AS TO THE FITNESS, WORKMANLIKE CONSTRUCTION, MERCHANTABILITY, DESIGN, CONDITION, QUALITY, OR HABITABILITY OF THE UNIT, THE PROJECT, OR ANY COMMON ELEMENTS RELATED THERETO OR ANY ELECTRICAL, PLUMBING, HEATING, GAS, WATER, SEWER, STRUCTURAL COMPONENTS, OR OTHER MECHANICAL OR UTILITY SYSTEMS OR COMPONENTS OR APPLIANCES OR FIXTURES RELATED THERETO. THE OWNERS AND THE ASSOCIATION ACCEPT THE FOREGOING DISCLAIMER OF WARRANTIES AND WAIVE, RELEASE AND INDEMNIFY THE DECLARANT AND/OR OTHER RELEASED PARTIES FROM ALL CLAIMS RELATED THERETO, AND ANY EXPENSES AND ATTORNEYS FEES INCURRED BY THE DECLARANT AND/OR OTHER RELEASED PARTIES, TOGETHER WITH ANY CLAIMS FOR BODILY INJURY, PROPERTY DAMAGE AND INCIDENTAL OR CONSEQUENTIAL DAMAGES MADE BY ANY PERSON OR PARTY.

H. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS AND THE ASSOCIATION COVENANT AND AGREE THAT THE DECLARANT AND/OR OTHER RELEASED PARTIES SHALL NOT BE LIABLE FOR CLAIMS RELATING TO THE UNIT OR TO THE COMMON ELEMENTS ARISING OR RELATING TO ANY DEFECT IN WORKMANSHIP OR IN ANY MATERIAL USED IN CONSTRUCTION, AND THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, AND THE ASSOCIATION, EXPRESSLY WAIVE AND RELEASE ALL RIGHTS TO SUE FOR A DEFECT IN CONSTRUCTION OF THE UNIT OR



COMMON ELEMENTS OR BOTH AND SHALL RELY SOLELY ON THE OWNER'S OWN INSPECTION AND EXAMINATION OF THE PROJECT AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF THE DECLARANT AND/OR OTHER RELEASED PARTIES. THE OWNERS, THEIR HEIRS, SUCCESSORS AND ASSIGNS COVENANT AND AGREE THAT THE SALES PRICES OF THE UNITS ARE BASED IN PART UPON THE RELEASES, WAIVERS AND INDEMNITY CONTAINED IN THIS SECTION AND THE OTHER PROVISIONS OF THE DECLARATION.

I. Any action, dispute, claim or controversy between any person, entity, including without limitation, any Owner and/or the Association, and the Declarant and/or other Released Parties, whether sounding in contract, tort or otherwise, and whether or not concerning an individual Unit or the Common Elements may be submitted by the Declarant, at its option, to be resolved by binding arbitration as set forth in this Section and shall include all disputes arising out of or in connection with any condition of a Unit or Common Element, this Declaration, and any related agreements or instruments and any transaction contemplated hereby. If so submitted, such disputes shall be resolved by binding arbitration before a single arbitrator in accordance with Title 9 of the U.S. Code, Colorado Uniform Arbitration Act, C.R.S. 13-22-201, et. sec., and the Commercial Arbitration rules of the American Arbitration Association ("AAA"). In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section. The parties shall be entitled to conduct discovery as if the dispute were pending in a Court of law in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is empowered to decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Except as otherwise provided, the arbitrator selected under this Section shall be knowledgeable in the subject matter of the dispute. The arbitrator shall be selected through panels of qualified judges maintained by the Denver, Colorado office of the AAA. All such arbitration shall be held in Colorado Springs, Colorado, and venue shall be proper in the District Court for El Paso County, Colorado.



## VIII

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 8.1 Membership. Every Owner shall be a member of the Association and shall remain a Member until such time as his ownership of his Condominium Unit ceases. When more than one person holds title to a Condominium Unit, all such persons shall be Members of the Association, but such multiple or joint ownership shall not increase the voting rights allocable to such Unit. Membership in the Association shall not be transferred, except in connection with the sale or conveyance of a Condominium Unit. However, the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Condominium Unit. Membership in the Association is not transferred when an Owner leases his Condominium Unit.

Section 8.2 Voting Membership. The Association shall have one class of voting membership who shall be the Owners. The Owners shall elect all the members of the Board, following the termination of Declarant Control as set forth in Section 8.3 below.

#### Section 8.3 Voting Right.

A. Each Condominium Unit shall have equal voting rights based upon one vote per Unit as set forth in Exhibit B to the Declaration; the affirmative vote of a majority of the Proportionate Interests shall be required for decisions and action by the Association, unless otherwise provided herein or in the Declaration or Bylaws. If only one of the multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast all votes allocated to that unit. Alternatively, if more than one person holds an interest in a Condominium Unit, they may appoint one of their co-Owners as proxy to cast the vote for that Condominium Unit. The vote for such Condominium Unit shall be cast as the Owners holding a majority interest in thereof agree, but in no event shall they cast more than the voting rights allocated that Unit on any one question. If such Owners of such Condominium Unit cannot agree as to the manner in which their vote shall be cast when called upon to vote, then they will be treated as having abstained; during any such period, each Owner shall retain all other rights and obligations of membership in the Association.

B. Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Directors as follows: During the Period of Declarant Control, the Declarant, or persons designated by him or her, subject to certain limitations, may appoint and remove the officers and members of the Board. The Period of Declarant Control shall commence upon the recording hereof and shall terminate no later than either sixty (60) days after conveyance of seventy-five (75%) percent of the Units, which may be created, to Owners other than a Declarant, two (2) years after the last conveyance of a Unit by the Declarant in the ordinary course of business, or two (2) years after any right to add new Units was last exercised. A Declarant may voluntarily surrender the right to appoint and remove officers and Directors of the Board before termination of the Period of Declarant Control, but in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.



C. Not later than sixty (60) days after conveyance of twenty-five (25%) percent of the Units, which may be created, to Owners other than the Declarant, at least one member, and not less than twenty-five (25%) percent of the members of the Board shall be elected by the Owners, other than the Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Units, which may be created, to Owners other than a Declarant, not less than one-third (1/3) of the members of the Board must be elected by the Owners other than the Declarant.

D. Except as otherwise provided in Paragraph B of this Article, not later than the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon election or appointment as provided herein.

E. Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a vote of Members holding at least sixty-seven percent (67%) of the Proportionate Interests present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

F. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property and items described by C.R.S. 38-33.3-303(9).

## IX

### ASSOCIATION FUNCTIONS

Section 9.1 Management. Subject to Article X, the management and operation of the Project shall be by the Association which shall be organized and shall have all powers and fulfill its functions pursuant to this Declaration, the Articles of Incorporation, the Bylaws, the CCIOA, and all other applicable statutes and common law of the State of Colorado in effect from time to time. The Association shall act by and through its Board, its elected officers, and its agents and employees. The Board may take any action without any vote of the Owners or Members unless such vote is specifically required in this Declaration, the Articles of Incorporation, the Bylaws, or the Rules.

Section 9.2 Association Powers and Responsibilities. The Association, subject to the rights and duties of the Owners as set forth elsewhere in this Declaration, shall be responsible for the management, control, operation, maintenance, replacement and repair of the Common Elements as more specifically provided herein.

Section 9.3 Property of Association. The Association may pay for, acquire and hold real and tangible and intangible personal property and may dispose of the same by sale or otherwise. Subject to the Rules of the Association, each Owner and each Owner's family, tenant and Guests may



use such property. Upon termination of condominium ownership of the Project and dissolution of the Association, if ever, the beneficial interest in any such property shall be deemed to be owned by the then Owners as tenants in common in the same proportion as their respective Proportionate Interests. The transfer of title to a Condominium Unit by sale, conveyance, foreclosure or procedure in lieu of foreclosure shall transfer to the purchaser, without the necessity of any reference thereto, the beneficial interest in such property associated with the Condominium Unit; such beneficial interest shall not be transferable except with the transfer of the Condominium Unit.

Section 9.4 Association's Right to Lease and License General Common Elements. With the prior written consent of Owners entitled to vote sixty-seven percent (67%) of the votes allocated to Condominium Units sold by the Declarant, the Association shall have the right to lease or license or permit the use of, by less than all Owners or by non-Owners, on either a short-term basis or long-term basis with or without charge, and upon such terms as the Association may deem desirable, all or any part of the General Common Elements.

Section 9.5 Restrictions Upon Association and Owners. Except as provided in Articles XV, XVI and XVII hereof and except as provided in C.R.S. 38-33.3-219, unless at least sixty-seven percent (67%) of the First Mortgagees of Units (based upon one [1] vote for each First Mortgage owned or held) and at least sixty-seven percent (67%) of the Owners, other than Declarant (based upon one [1] vote for each Condominium Unit owned), have given their prior written approval, neither the Association nor the Owners shall be empowered or entitled to:

- (i) by act or omission, seek to abandon or terminate the Project or the provisions hereof for architectural control and enforcement or for maintenance of the Common Elements as herein provided;
- (ii) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Condominium Unit in the Common Elements except as provided in Article XVII hereof;
- (iii) partition or subdivide any Condominium unit;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any of the General or Limited Common Elements apart from any Condominium Unit, except as provided by Section 5.6 hereof, but subject to C.R.S. 38-33.3-312;
- (v) use hazard insurance proceeds for loss to Condominium Unit and/or Common Elements improvements for other than repair, replacement or reconstruction of such improvements;
- (vi) fail to maintain full current replacement cost fire and extended insurance coverage on the Units and Common Elements and such other insurance as is required under this Declaration;



(vii) make a material change in any of the following provisions of this Declaration: voting rights; assessments, assessment liens, or the priority of assessment liens; reserves for maintenance, repair, and replacement of Common Elements; responsibility for maintenance and repairs; reallocation of interests in the Common Elements, or rights to their use; redefinition of any Unit boundaries; convertibility of Units into Common Elements or vice versa; expansion or contraction of the Project, or the addition, annexation, or withdrawal of Property to or from the Project; insurance or fidelity bond; leasing of Units; imposition of any restrictions on an Owner's right to sell or transfer his or her Units; a decision by the Association to establish self-management when professional management had been required previously by this Declaration or by a First Mortgage holder; restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration; any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or any provisions that expressly benefit First Mortgage holders, insurers, or guarantors; or

(viii) notwithstanding any provision hereof or otherwise, threaten, file or pursue any lawsuit, arbitration and/or administrative or similar proceedings against the Declarant, its agents, employees, shareholders, contractors, brokers, successors, assigns or any person or party related to it for any claim, demand, liability, obligation or matter whatsoever, including without limitation, the construction, physical condition, value, assessments, reserves, and any other matters related to the Project.

Section 9.6 Additional Restrictions During Declarant Control. In addition to the provisions of Section 9.5, after the Declarant has obtained evidence of approval for guaranteed or insured loans by Federal Housing Administration or the Department of Veterans Affairs and continuing until such time as the Period of Declarant Control has terminated, the prior written approval of the Department of Veterans Affairs or the Federal Housing Administration of the U.S. Department of Housing and Urban Development shall be required for the following:

- A. Amendment of the Condominium Declaration;
- B. Amendment of the Articles of Incorporation or the Bylaws of the Association;
- C. Annexation of additional properties to this Condominium Declaration;
- D. Dedication or mortgaging of all or any part of the Common Elements by the Declarant, except as provided by Section 5.6 hereof;
- E. Merger, consolidation or dissolution of the Association which shall also comply with C.R.S. 38-33.3-221; and
- F. Any special assessment for capital improvements. "Capital Improvements", as used herein, shall mean the construction, erection or installation of substantial structure(s) or other substantial improvements on the Property, but shall not include the construction,



reconstruction, erection, installation, maintenance, repair or replacement of Common Elements presently located on the Property or which may hereafter be constructed, erected or installed on the Property by the Declarant in its development of the Project.

Section 9.7 Inspection of Records and Notice to First Mortgagees. The Association shall keep financial records sufficiently detailed to enable the Association to provide the certificates of assessments described in Section 11.7(D) hereof. The Association shall make available to Owners and lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Articles of Incorporation, Bylaws, other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Additionally, if the Project contains fifty (50) or more Condominium Units, the Association shall provide an audited, annual financial statement to any First Mortgagee upon written request. If the Project contains less than fifty (50) Condominium Units, the holders of fifty-one percent (51%) or more of First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not otherwise available; said financial statement shall be furnished within a reasonable time following such request. Further, the Association shall, if requested in writing, notify each First Mortgagee recorded on its books of any proposed amendment of the Association's Declaration, Articles of Incorporation or Bylaws or any other action requiring the First Mortgagee's consent at least ten (10) days prior to the effective date of such amendment or action. In addition, the Association shall comply with C.R.S. §7-136-101 through 106.

Section 9.8 Promulgation of Rules. The Board may make such Rules (the "Rules") to enforce the provisions of this Declaration or the Bylaws or to govern the use of the Common Elements or Units or both, as are, in its sole discretion, consistent with the rights and duties established in this Declaration. The Board shall have the sole discretion and authority to change such Rules from time to time and to interpret this Declaration, the Articles of Incorporation, the Bylaws and Rules and to resolve any dispute as to the interpretation thereof; the Board's interpretation shall be final, conclusive and binding on all persons and parties.

Section 9.9 Enforcement. The Board and any aggrieved Owner shall have the power and authority to enforce each and every one of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the decisions, resolutions, Rules of the Board. Except as otherwise provided, each Owner shall comply strictly with the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, and the decisions, resolutions, and Rules of the Board adopted pursuant thereto as the same may be lawfully made and amended and/or modified from time to time. Failure to comply with any of the same shall mean that (a) the Board may suspend the Owner's voting rights in the Association and any Association services and usage of Association facilities during any period during which such Owner fails to comply, (b) Board may also file and enforce the liens provided for herein and/or take judicial action against the Owner to enforce compliance with such rules, decisions or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law, including recovery of costs and reasonable attorneys' fees, and/or (c) the Board may also fine any Owner, and his family member, Guest, or tenant who violates the terms and provisions of this Declaration, the Bylaws, and/or the Rules, a sum as set forth in the



Rules and decisions of the Board and if such fine remains unpaid for ten (10) days after notice, it shall become a Unit Assessment as provided herein. Any person or entity employed as a property manager may be authorized by the Board to undertake the foregoing enforcement, including without limitation the instituting of litigation and/or the impositions of fines on behalf of the Board.

Section 9.10 Implied Rights. The Association and the Board shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

## X

### MANAGEMENT

Section 10.1 Management Agreements. The Association may utilize professional management in performing its duties hereunder. Each Owner shall be bound by the terms and conditions of all management agreements entered into by the Board. A copy of all such agreements shall be reasonably available, upon request, to each First Mortgagee and each Owner. Any and all professional management agreements shall be made with a responsible party or parties having experience adequate for the management of a project of this type. Any professional management agreement shall not exceed one (1) year and shall provide that it can be terminated without payment of a termination fee by the Board with or without cause upon thirty (30) days' written notice. Further, each and every management contract made between the Association and a manager or managing agent during the period when the Declarant or other developer controls the Association, shall be subject to review and approval by the Department of Veterans Affairs or the Federal Housing Administration and shall terminate absolutely, in any event, not later than thirty (30) days after termination of the Period of Declarant Control. Furthermore, any contracts or leases during the Period of Declarant Control shall be subject to C.R.S. 38-33.3-305. If professional management has been previously required by any holder, insurer or guarantor of a First Mortgage, then any decision to establish self management shall require the prior consent of sixty-seven percent (67%) of the Owners, who are voting in person or by proxy at a meeting duly called for that purpose, and sixty-seven percent (67%) of the First Mortgagees, and it shall then be the duty of the Association or its Board to effect a new management agreement prior to the expiration of any prior, required management contract.

Section 10.2 Other Personnel. The Board may obtain and pay for the services of such other personnel as it deems appropriate in its sole discretion.

## XI

### ASSESSMENTS

Section 11.1 Personal Obligation to Pay Assessments and Charges. Each Owner of any



Condominium Unit, including Declarant and including any purchaser under an executory land sales contract wherein the Administrator of Veterans Affairs is identified as the seller, covenants and agrees to pay, and shall be personally obligated to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fines, fees and other sums described in this Declaration and/or imposed by the Association as permitted by this Declaration. All Owners of a Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Condominium Unit. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by non-use of the Common Elements or the facilities contained therein, by abandonment or leasing of his Condominium Unit, or by asserting any claims, defenses or other matters against the Association, the Declarant or any other person or entity. In addition to the foregoing assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. Any utilities which are master metered shall be included in the annual common expense assessments levied by the Association.

Section 11.2 Enforcement of Personal Obligation. In addition to the lien described herein, the Association may, at its option, suspend all voting rights and the right to use any common services and facilities, until all payments owed by an owner are received, and/or may bring an action at law against any Owner to collect any unpaid assessments, charges, fees and other sums. In any such action, the Association shall be additionally entitled to recover, and the Owner to pay, interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge as set forth in the Association's Rules, court costs and other collection costs, and reasonable attorneys' fees. Notwithstanding any terms and provisions of this Condominium Declaration to the contrary, but subject to the CCIOA, the sale or transfer of any Condominium Unit shall not affect the personal liability or the lien for assessments, charges, fees or other sum levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, cancellation or forfeiture of any such Department of Veterans Affairs executory land sales contract, shall extinguish the lien of assessments which became due prior to the First Mortgagee's acquisition of title to such Unit pursuant to any such sale or transfer or foreclosure, or any above-described proceeding in lieu thereof, and further, no First Mortgagee shall be liable for any unpaid assessments, charges, fees or other sums accruing against a Condominium Unit prior to such First Mortgagee's acquisition of title to such Unit pursuant to any such sale, transfer, foreclosure or any above-described proceeding in lieu thereof. No such sale, transfer, foreclosure or any above-described proceeding in lieu thereof shall relieve either any owner or any Condominium Unit from liability or the lien for any assessments, charges, fees or other sums thereafter becoming due. As provided above, the lien of the assessments provided for herein shall be subordinate to the lien of any purchase money by a First Mortgage of record (including deed of trust), and to any refinancing loan to refinance any such purchase money loan, provided that any such refinancing loan is evidenced by a First Mortgage of record (including deed of trust).



Section 11.3 Annual Assessments. The annual assessment shall be based upon the Board's advance budget of the requirements needed by it to provide for the Common Expenses and the administration and performance of its duties during such assessment year. The annual budget shall be adopted pursuant to C.R.S. 38-33.3-303(4). Any surplus funds of the Association remaining after the payment of or provision for Common Expenses and any prepayment of or provision of reserves shall be applied as the Board in its sole discretion determines appropriate; the Board is not required to credit or pay such funds to Owners. The annual assessments may, at the Board's discretion, include, but shall not be limited to the following:

- A. any costs and expenses related to management and to the activities and property of the Association;
- B. any taxes and special tax assessments on the activities and property of the Association;
- C. premiums for all insurance which the Association is required or permitted to maintain as provided in Article XIII hereof and any deductibles or expenses attributable to such insurance;
- D. expenses for common services which may include, without limitation, clubhouse, pool, private streets, common lighting, water, gas, electricity, sewer, snow removal, garbage and trash collection, except any of the foregoing as may be separately metered or billed, provided however, during the Period of Declarant Control, the Declarant shall be responsible for paying all costs related to the clubhouse, swimming pool and tot lot, including without limitation, any repairs, maintenance, insurance (to the extent prorated or equitably allocated under a master policy) and utilities; after the Period of Declarant Control, the Declarant may continue to use the clubhouse, pool and tot lot and related amenities for its sales and marketing and its tenants in the Expansion Property not annexed but shall pay the Association its share of the costs thereof by Declarant's proration of such costs as divided among all Units within the Property;
- E. landscaping and care of the grounds;
- F. such repairs, restorations, replacements, improvements, and maintenance of the Common Elements which are the responsibility of the Association; provided, however, there shall be no division of assessment charge between the expenses of Limited and General Common Elements and provided further such work shall not require the prior approval of the Association regardless of the expense or amount thereof unless a Special Assessment is required pursuant to Section 11.4 hereof;
- G. wages for Association employees;
- H. legal and accounting fees;



I. any deficit remaining from a previous assessment year;

J. the creation of reasonable reserves, surpluses and sinking funds for the periodic replacement, repair and maintenance of those Common Elements which are the Association's responsibilities, and for other periodic expenses, and are payable in regular installments, rather than by special assessments, and adequate reserves for insurance deductibles; and

K. any other costs, expenses and fees, which may be incurred or may reasonably be expected to be incurred by the Board for the benefit of the Owners under or by reason of this Declaration.

Section 11.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year, as provided in Section 11.5, a special assessment applicable to that year only for the purpose of defraying, in whole or in part:

A. The cost of any emergency situation or any construction, demolition, reconstruction, repair or replacement of all or a substantial part of the Project, including without limitation the Common Elements and any fixtures and personal property related thereto, or

B. The expense of any other contingencies or unbudgeted costs.

Section 11.5 Procedure for Special Assessments Under Section 11.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 11.4 shall be sent by the Board to all Owners not less than ten (10) days nor more than fifty (50) days in advance of the meeting. Said notice shall specify the amount of the assessment and the date of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast sixty-seven percent (67%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall not be held more than sixty (60) days following the preceding meeting. Any such assessment shall require the assent of sixty-seven percent (67%) of the votes which are cast at such a meeting where a quorum is present.

Section 11.6 Unit Assessments. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family, tenants or Guests, or any breach by any of such parties of any of the provisions of this Declaration, the Association's Bylaws or the Association's Rules, and the same is not totally paid for by insurance, the cost thereof shall be an assessment against that Owner and his Condominium Unit and if unpaid shall be both a personal obligation of such Owner and a lien as herein provided. Additionally, the Board may impose assessments against particular Owners and Units pursuant to C.R.S. 38-33.3-315(3)(a) and (b) and may impose assessments upon Owners and Units as set forth in the Association's Rules.



#### Section 11.7 Payment Procedures.

A. Amounts. Subject to the provisions of this Declaration, any amounts assessed as annual or special assessments shall be assessed against each Owner and his Condominium Unit in accordance with that Owner's Proportionate Share. If an Owner's Proportionate Share is reallocated as a result of expansion under Article XVII, assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Owner's Proportionate Share. Unit assessments shall be assessed and payable solely by the Owner and the Condominium Unit against which they are levied.

B. Payment Dates.

(i) Annual Assessments. The annual assessment shall be divided into twelve (12) equal monthly installments per year, which shall be due and payable by the Owners in advance on the first day of each month. The monthly installments of the first annual assessment for all Condominium Units within the first phase or any subsequent phase annexed as provided in Article XVII shall commence upon the first day of the first month following the first conveyance of any Condominium Unit therein from the Declarant to the first Owner thereof. Subsequent annual assessments shall commence on January 1 of each subsequent year. At least twenty (20) days in advance of the annual assessment year, the Board shall establish the amount of the annual assessment against each Owner and his Condominium for the following year, and written notice of any change of the Annual Assessment shall be sent to each Owner.

(ii) Special Assessments and Unit Assessments. Special Assessments and Unit Assessments shall be due and payable on the date specified by the Board in written notice to each Owner, but such date shall not be less than ten (10) days after such notice is sent.

C. Procedure. Failure of the Board to give timely notice of any assessment as provided herein or to comply with any procedure for setting or collecting assessments shall not affect the liability of the Owner or his Condominium Unit for such assessment, and shall not be deemed to be a waiver, modification or release of any Owner from his obligation to pay the same, but if notice is not given, the date when payments shall be due shall be deferred to a date after such notice given.

D. Estoppel Certificate. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or, by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. Upon payment of such fee as required by the Association's Rules, the statement shall be furnished within fourteen calendar days after receipt of the request and is binding on the Association, the Board, and every Owner. If no statement is furnished to the Owner or holder of a security interest or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then 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.

E. Initial Fee. The Board shall require the first Owner of each Condominium Unit, at the time of conveyance from Declarant, to make a one-time payment in an amount equal to two (2) months' assessments, which sum shall be used for working capital and to enroll that Owner in the Association and for all matters related thereto and shall be placed in the working capital account of the Association. Such a payment shall not relieve an Owner from making any regular monthly assessment payment as the same comes due and shall not be refundable. Upon termination of the Period of Declarant Control, the Declarant shall pay the working capital for any unsold annexed Units in the Project, but shall be reimbursed by subsequent purchasers. During the Period of Declarant Control, the Declarant may not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

#### Section 11.8 Enforcement by Lien.

A. In addition to the personal liability under Sections 11.1 and 11.2 hereof and any statutory lien and rights to which the Association may be entitled under C.R.S. 38-33.3-316, any unpaid assessment, charge, fee, fine or other sums assessed against an Owner or his Condominium Unit, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge as set forth by the Association's Rules, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, in favor of the Association, upon the Condominium Unit against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any costs or fees, and then to the assessment payment first due.

B. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Condominium Unit, setting forth the name of the Owner, the legal description of the Condominium Unit, the name of the Association and the amount of delinquent assessments then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Condominium Unit, at the address of the Unit or at such other address as the Association may have in its records for the Owner of the Condominium Unit. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Any recorded lien may be released by recording a document to that effect executed by an officer or agent of the Association. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from pursuing any other right or remedy or suing the Owner personally therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Condominium Unit at



foreclosure or other legal sale, to have the total amount of its lien credited towards any purchase price, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same, but pursuant to C.R.S. 38-33.3-310(4), no votes allocated to a Unit owned by the Association shall be cast. The Association shall have the power and the right, but not the obligation, to cure any default by an Owner under a First Mortgage, and any and all sums expended by the Association shall increase the sums owed by that Owner under the Association's lien and otherwise. Foreclosure of a Unit shall include the membership interest attached thereto but such foreclosure shall not be considered a purchase of such interest pursuant to C.R.S. §7-126-303.

C. The lien provided for herein shall be subordinate to the lien of any real estate taxes and, as provided above, the lien of any First Mortgage, which was duly recorded prior to the date such assessment, charge, fee or other sums became due, and which shall include, without limitation, the lien of any executory land sales contract wherein the Administrator of Veterans Affairs is Seller, whether owned by the said Administrator or his assigns, and whether recorded or not, encumbering any Condominium Unit, and shall also include any and all advances made by a First Mortgagee or executory land sales contract seller, notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Condominium Association's lien. However, such lien shall be superior to all other liens and encumbrances and shall be superior to any homestead exemption as now or hereafter may be provided by Colorado or Federal law, and the acceptance of any right, title or interest in or to a Condominium Unit shall constitute a waiver of such homestead exemption.

Section 11.9 Notice and Opportunity to Cure by First Mortgagee. The holder of any First Mortgage upon a Condominium Unit may request that the Association notify it, in writing at its specified address, of any default by the Owner of said Unit in paying assessments, charges, fees or other sums or performing other obligations under this Declaration, the Bylaws, or Rules, which is not cured within sixty (60) days of when due. Any First Mortgagee may, but shall not be required to, cure any such default and pay any such assessments, charges, fees or other sums.

Section 11.10 Payments by First Mortgagees. 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 Association common property and may pay overdue premiums on hazard insurance policies, or secure new hazards insurance coverage on the lapse of a policy, for such common property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

## XII

### MAINTENANCE AND REPAIR

#### Section 12.1 Owner's Responsibilities.

A. Total Responsibility. An Owner shall be responsible, at his sole expense, for



the maintenance, repair, replacement, alteration and remodeling of the following: (i) any loss, damage or injury to the Project, the Common Elements, or any other Condominium Unit caused, in the sole discretionary determination of the Board, by the negligent or willful act or omission of Owner, his family, Guests, tenants, contractors, other persons or parties acting with the consent of any of the foregoing, including without limitation, any damage to the Property done by moving vans or delivery vehicles, or any pets or animals of the foregoing; (ii) the interior of the Unit including interior non-supporting walls, floors and ceilings of his Unit and the materials thereof, including but not limited to, plaster, gypsum dry wall, paneling, woodwork, wallpaper, paint, carpet, wall and floor tile and flooring (but not including sub-flooring), which make up the finished surfaces of the perimeter walls, ceiling and floors within the Unit; (iii) all interior and exterior doors, locks, screens, light bulbs, windows and window fixtures, (iv) all cabinets, kitchen and bathroom fixtures and equipment, and appliances; (v) all light, plumbing, furnace, air conditioning, hot-water heater and heating improvements which are for the exclusive use of his Unit, and the related hardware, (vi) any and all additions and improvements made by the Owner after Declarant's initial construction, (vii) all utility lines, pipes, conduits, equipment and fixtures from the point where they enter his Unit and (viii) all water pipes contained in exterior walls of a Unit that freeze and break and all damage resulting from the freezing or breaking of such pipes, provided, however, an Owner shall not do or permit any act or work which might impair the structural soundness of the Building or would impair any utilities, or parts thereof, which serve other Condominium Units and provided further an Owner shall not be obligated to undertake any repairs, maintenance, or replacements for which the Association has received insurance proceeds. All maintenance, repair, alteration or remodeling done by an Owner shall be of equal or better materials and workmanship than as originally constructed by Declarant.

B. Limited Responsibility. In addition, each Owner shall be responsible to keep and maintain, at his sole expense, in good repair and a clean sanitary condition, his Limited Common Elements, including without limitation repair and restoration of concrete in the driveway, sidewalk, patio and porch and the wood in the porch rails and fence (which shall be stained or painted by the Association); provided, however, the Board may decide, by written rule, in its sole discretion, to repair, maintain, and restore any landscaping, patio, garage, driveway, sidewalk, fence, railing, or other Limited Common Element, as Common Expenses pursuant to Section 12.3, even though located within or designated as Limited Common Elements. Except as provided herein, the Owner's responsibility shall not include replacement, repainting, alteration or structural repair of his Limited Common Elements, nor for any maintenance thereof, to the extent such is included as a Common Expense in the Association's budget.

C. Owner's Failure. If Owner fails to fulfill his responsibilities under paragraphs A and B of this Section, or otherwise under this Declaration, the Board may, at its option, take such action as it deems appropriate, after ten (10) days' notice to such Owner, except in emergencies, including without limitation performing the Owner's obligations, and any costs resulting therefrom shall be a Unit Assessment against such Owner and his Condominium Unit and shall be due and payable by the Owner thereof.

Section 12.2 Association's Responsibilities. The Board shall determine, in its



reasonable business judgment, the specifications, scope, extent, nature and parameters of the Association's maintenance responsibilities hereunder and performance thereof. Subject to the foregoing and other provisions hereof, the Association shall have the duty of maintaining, repairing and replacing the following:

(i) All of the Common Elements which are not the Owner's responsibility under Section 12.1; such repair and maintenance shall include, but not be limited to, the provision of exterior maintenance as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior Building surfaces (except doors, garage doors, locks, light bulbs, glass and window screen surfaces, and any hardware or equipment related to the foregoing, which shall be the Owner's responsibility), trees, grass, roads, driveways, walks and other exterior improvements;

(ii) All of utilities located outside of a Unit and serving more than one Unit (to the extent not maintained or repaired by the utility company) and, if applicable, any drainage structures or facilities or public improvements to the extent set forth in C.R.S. 38-33.3-307(1.5).

(iii) Any part of the structure of any Building, or General Common Element even if located within the Unit;

(iv) Any damage caused to a Condominium Unit by any defect, occurrence or condition of the Common Elements for which the Association receives insurance proceeds; the Association's responsibility under this subparagraph (iv) shall include restoration of the Unit, together with any fixtures, built-in cabinets, built-in appliances, and improvements, which are contained within a Unit and which comprise part of the Building, and carpeting, if insured, to a condition comparable to that when the Unit was conveyed by Declarant.

Section 12.3 Repair Work by Association. It shall be the responsibility of each Owner to promptly report to the Association any defect or need for repairs which would be the responsibility of the Association. The Board shall engage and pay for all labor and materials as may be necessary for the work for which the Association is responsible. The Board and its authorized representatives shall have the right to enter upon the exterior, and at reasonable times, the interior of any Unit, for inspection or the performance of such work. The cost of the maintenance and repair described in Section 12.2 hereof and any incidental damage caused to a Unit by such work shall be a Common Expense of all of the Owners, and regardless of amount, it shall be assessed as provided herein for annual or special assessments, unless, however, the need for maintenance or repair is the Owner's responsibility under Sections 11.6 or 12.1 hereof. The Board or its authorized representative is hereby authorized to act for any Owner in his absence when, in the reasonable discretionary opinion of the Board or its authorized agent, an emergency exists or damage to other Condominium Units is eminent; the cost of such action shall be a Common Expense except as provided above.

### XIII

### INSURANCE



Section 13.1 Insurance by the Association. Commencing not later than the time of the first conveyance of a Unit to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, the following types of insurance:

A. Property. Property insurance for broad form (or greater coverage encompassing broad form) covered causes of loss for all Common Elements, all Buildings and improvements upon the Property, including all General and Limited Common Elements, and all Condominium Units (as provided herein), all common property of the Association, and all personal property included in the Common elements, together with all attached fixtures, building service equipment, built in cabinets, built in appliance, improvements and other personal property which are contained in a Unit and which are financed by a First Mortgage, shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; such insurance must include the Units but need not include the finished interior surfaces of the walls, floors, and ceilings of the Units or the improvements and betterments installed by Owners, but if they are covered at the Board's discretion, any increased charge may be assessed by the Association to those Owners. Such insurance shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and shall include to the extent available an "Inflation Guard Endorsement", "Agreed Amount Endorsement", or equivalent endorsement waiving any co-insurance, an "Ordinance and Law Endorsement" including "Demolition Cost Endorsement", "Increased Cost of Construction Endorsement" and a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and, if applicable, "Steam Boiler Coverage" providing that the insurer's minimum liability per accident shall equal the lesser of the insurable value of any building housing such boiler or machinery or Two Million Dollars (\$2,000,000.00), either by endorsement or by separate policy including a "joint loss agreement". Such insurance as maintained by the Association pursuant to this Section shall afford protection against at least the following:

(1) loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and

(2) such other risks as shall customarily be covered with respect to similar types of projects including those covered by standard "all risk" endorsement including without limitation endorsements for vandalism and malicious mischief

B. Public Liability. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, in an amount deemed sufficient in the judgment of the Board but not less than any amount specified in the Association's documents, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a unit Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other