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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
CHATEAU ASPEN APARTMENTS**

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**AMENDED AND RESTATED  
CONDOMINIUM DECLARATION  
FOR  
CHATEAU ASPEN APARTMENTS**

This Amended and Restated Declaration is made effective upon recording.

***RECITALS:***

A. Declarant, Chateau Aspen Development Company, a Colorado corporation, recorded that certain Condominium Declaration for Chateau Aspen Apartments on January 19, 1967 at Reception No. 126477 in Book 225 at Page 236, in the Office of the Clerk and Recorder for Pitkin County, State of Colorado, as amended and supplemented by documents of record, if any, ("Original Declaration") subjecting the real estate described therein to the terms and conditions set forth in the Original Declaration;

B. The Owners and the Association desire to amend and restate all provisions of the Original Declaration, as amended and supplemented, by virtue of this Amended and Restated Condominium Declaration for Chateau Aspen Apartments ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments, and supplements thereto be superseded and replaced by this Declaration;

C. The Original Declaration provides for and allows for this Declaration in Paragraph 18, which provides as follows:

This Declaration shall not be revoked nor shall any of the provisions herein be amended unless sixty-six and two-thirds percent or more of the owners representing an aggregate ownership interest in the general common elements and all of the holders of any recorded mortgage or deed of trust covering or affecting any or all condominium units unanimously consent and agree to such revocation or amendment by instrument(s) duly recorded;

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association, as provided in the Declaration, is to preserve the value and desirability of the Community and the Units and to further the interests of the residents of the Community and Members of the Association; and

H. At least 66 2/3% of the Owners and 100% of the first mortgagees have approved this Declaration, or alternatively, a court order entered by the District Court for Pitkin County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW, THEREFORE, the Original Declaration is replaced and amended and restated as follows:

## ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms. Each capitalized term in this Declaration or in the Map shall have the meaning specified or as used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

- (a) "Act" shall mean the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 *et. seq.*, as it may be amended.
- (b) "Allocated Interests" shall mean the undivided interest in the Common Elements, the Common Expense liability and the votes in the Association.
- (c) "Assessment" shall include all Common Expense Assessments and any other expense levied to a Unit pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.
- (d) "Association" shall mean Chateau Aspen Condominium Association, a Colorado nonprofit corporation, and its successors and assigns.
- (e) "Board" or "Board of Directors" shall mean the body designated in the Governing Documents to act on behalf of the Association.

(f) "Business Unit" shall mean a physical portion of the Community, designated for separate ownership and use for retail/business uses allowable by governmental zoning, as further designated on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration. The Units marked as Business Units are Units 4, 5, 6, 21 and 21A.

(g) "Common Elements" shall mean the Property within this Community other than the Units, which portion of the Property may be designated on the Map and in this Declaration. Common Elements shall include Limited Common Elements. The Common Elements shall be owned, as tenants in common, by the Owners of the separate Units, each owner of a Unit having an undivided interest in the Common Elements.

(h) "Common Expenses" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(i) "Community" shall mean the Community of Chateau Aspen, also known as the Chateau Aspen Condominiums, which Community is a Condominium Community as defined in the Act and which Community is also a Common Interest Community as defined in the Act.

(j) "Declaration" shall mean and refer to this Amended and Restated Condominium Declaration for Chateau Aspen Apartments, as amended, recorded in the office of the Clerk and Recorder of Pitkin County, Colorado.

(k) "Eligible Mortgage Holder" shall mean a holder of a first mortgage on a Unit that has submitted a written request for the Association to notify such holder of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders, which request must contain its name, address, and the legal description and address of the Unit upon which it holds a security interest.

(l) "Governing Documents" shall mean this Declaration, the Map, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association, as they may be amended from time to time.

(m) "Limited Common Elements" shall mean those portions of the Common Elements, which are limited to and reserved for the exclusive use of one or more, but fewer than all of the Owners, as further clarified in Article 4.

(n) "Map" shall mean the Condominium Map of Chateau Aspen (and any supplements and amendments thereto) of the Community depicting and locating thereon the location of the buildings, the Units, the Common Elements, the floors and elevations, and all of the land and improvements thereon as the Map may be amended or supplemented from time to time, which Map is incorporated herein and made a part of



this Declaration by reference. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(o) "Member" shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(p) "Owner" shall mean the owner of record title, whether one or more persons or entities to any Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(q) "Pet" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be defined in or supplemented by the Rules and Regulations.

(r) "Property" shall mean the property described in the Original Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(s) "Residential Unit" shall mean a physical portion of the Community, designated for separate ownership and use as a residential dwelling, as further designated on the recorded Map for the Community, the boundaries of which are defined in the Map and in this Declaration.

(t) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community, and/or clarification of the Governing Documents, including any amendment to those instruments.

(u) "Unit" shall mean, collectively, Business Units and Residential Units.

## ARTICLE 2 NAMES/DESCRIPTION OF PROPERTY

Section 2.1 Name and Type. The type of Common Interest Community is a condominium community. The name of the Community is "Chateau Aspen" and is also known as "Chateau Aspen Condominiums." The name of the Association is the "Chateau Aspen Condominium Association."

Section 2.2 Property. The Community is located in Pitkin County, State of Colorado. The Property subject to this Declaration is described in *Exhibit A* of this Declaration, in the Original Declaration, in the Map, and/or as is consistent with the common plan and scheme for the creation and operation of the Community. The Community may be subject to easements or

licenses granted pursuant to this Declaration, granted by authority reserved in any recorded document, or established in the Act.

Section 2.3 Utility, Map and Map Easements. Easements for utilities and other purposes over and across the Units and Common Elements may be as shown upon a recorded plat or the Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.4 Easements for the Association and Owners. Each Unit shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors), and to each Owner to allow for their performance of obligations in this Declaration. On exercising this easement right, the party exercising the right shall be responsible for any resulting damages. Non-emergency repairs shall be made only during regular business hours on business days after at least 24 hours notice to the occupants of a Unit wherein repairs are to be made. The Association shall have an easement to enter a Unit to inspect for events which may be causing waste of water, heat or any other utility provided by the Association or paid as a part of Common Expenses. If the inspection reveals that the Owner has failed to maintain the Unit so as to cause waste of common utility services provided for as a Common Expense, the Board shall follow the procedures provided for in Article 5 of this Declaration.

Section 2.5 Easement for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit currently encroaches upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same, except for incidental encroachments that may occur as a result of shifting of soils or settlement of a Unit. If any part of a Unit subsequently encroaches upon the Common Elements or upon another Unit, that encroachment shall be subject to all available remedies of the Association, or as allowed under this Declaration, unless the encroachment has been reviewed and approved (as provided for in this Declaration). The easement shall extend for whatever period of time the encroachment exists. Such easements for encroachments shall not be considered to be encumbrances either on the Common Elements or on a Unit. The actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered notwithstanding any minor deviations, either horizontally, vertically or laterally from the location of such Unit indicated on the Map.

Section 2.6 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of ingress and egress and enjoyment in, to, and over the Common Elements and Limited Common Elements appurtenant to his or her Unit, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) the right of the Association to limit the number of guests of Owners on the Common Elements;

(b) the right of the Association to adopt Rules and Regulations governing the use of the Common Elements;

(c) the right of the Association, upon approval of at least 67% of the total Association vote, to mortgage the Common Elements as security for the purpose of obtaining a loan, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;

(d) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Elements;

(e) the right of the Association to transfer or convey ownership of the Common Element, or any portion thereof, subject to the prior approval of 67% of the total Association vote; provided that all Owners of Units to which any Limited Common Element is allocated shall approve of any transfer or conveyance of that Limited Common Element;

(f) the right of the Association to suspend the voting rights and the right to use of any Common Elements during any period of violation of any provision of the Governing Documents; provided, however, that suspension of voting and use rights shall be automatic during any period that an Owner is in default in the payment of any Common Expense Assessment;

(g) the right of the Association to close portions of the Common Elements for maintenance, repair, replacement, and improvement; and

(h) the right of the Association to change use of, add or remove improvements to the Common Elements.

Section 2.7 Delegation of Use. Owners may delegate their right of enjoyment to the Common Elements to Owner's family, tenants, invitees, lessees, and guests, subject to Rules and Regulations. If the Owner delegates rights to use the Common Elements to tenants or contract purchasers who reside in the Unit, the Owner shall not be entitled to use the Common Elements.

### ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership. Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. Each Unit shall be entitled to one vote. Fractional and cumulative voting are prohibited.

Section 3.2 General Purposes and Powers of the Association. The Association, through its Board of Directors, shall perform functions and manage the Community as provided in the Recitals section of this Declaration. All Owners and any purchaser of a Unit shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.4 Managing Agent. The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The agreement shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on 90 days notice, with or without cause, and without a cancellation fee. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.5 Allocated Interests. The ownership interest, Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the percentage of ownership of the Common Elements, equally;
- (b) the percentage of liability for Common Expenses, equally; and
- (c) the number of votes in the Association, equally.

Section 3.6 Security Disclaimer. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.7 Education and Training. As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education on topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The type of educational opportunities shall be at the discretion of the Board of Directors. The Association may also fund and support education and training for officers and directors.

#### ARTICLE 4 UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.1 Number of Units. The number of Units presently included in the Community is 22.

Section 4.2 Unit Boundaries.

(a) Boundaries. The following are designated as boundaries of each Unit, as defined below and as depicted on the Map:

(i) The unfinished interior surfaces of the perimeter walls. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements. Where found on the walls and ceilings, the interior surfaces of built-in fireplaces with their flues in the closed position shall be boundaries of the Unit.

(ii) Unfinished interior surfaces of floors, or the lowermost floors, if it is a Unit containing more than one level;

(iii) Unfinished interior surfaces of ceilings, or the uppermost ceilings, if it is a Unit containing more than one level;

(iv) The windows and window frames, doors and door frames of the Unit.

Each Unit includes the spaces and improvements lying within the boundaries described above, including windows, window frames, doors and door frames, and as depicted on the Map.

#### Section 4.3 Limited Common Elements.

(a) The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(i) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit is a Limited Common Element to those Units and any portion serving only the Common Elements is a part of the Common Elements.

(ii) Any balconies, patios, decks, steps, stoops, walkways, or other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(b) The Association may modify Limited Common Elements without a membership vote, but only with consent of the Owner to whose Unit the Limited Common Element is appurtenant. The Association may also, without a membership vote, assign or reassign Limited Common Elements not previously assigned with the consent of the affected Owner(s) and the Association, provided that any such assignment or reassignment shall be made in accordance with the Act.

Section 4.4 Mechanic's Liens. No labor performed and/or materials furnished for use and incorporated into any Unit with the consent or at the request of the Owner thereof, his agent, contractor, or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien.

against the Unit of any other Owner, the Common Elements, or any part thereof, for labor performed and/or materials furnished in work on the first Owner's Unit. The Association may pay any sums necessary to eliminate any lien filed against Units not benefitting from the labor and/or materials furnished and the Common Elements on behalf of the other Owners and all sums paid shall be an Individual Assessment against the Owner or Owners for whom the labor and/or materials were furnished.

## **ARTICLE 5**

### **MAINTENANCE AND SERVICE RESPONSIBILITIES**

Section 5.1 Association Maintenance and Service Responsibilities. The Board of Directors of the Association shall determine the specifications, scope, extent, nature and parameters of the Association's maintenance and service responsibilities.

(a) The Association shall provide the following services and maintain and keep in good repair as a Common Expense the following:

(i) all Common Elements, including any Limited Common Elements (unless specifically listed as Owner responsibility under Section 5.2), but excluding all improvements made to such Limited Common Elements by the Owners; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Owner to whom the Limited Common Element is assigned under this Declaration;

(ii) periodic painting, staining and/or cleaning of exterior surfaces of the condominium building, exterior window frames, and entry doors and door frames, on a schedule to be determined by the Association;

(iii) all patios, decks, balconies, balcony railings, and any enclosure thereof;

(iv) any enclosed yard areas that are assigned as Limited Common Elements to certain Units, if any;

(v) all Limited Common Element chimneys, chimney caps, chimney boxes, and chimney flues;

(vi) all exterior light fixtures and light bulbs in the Community;

(vii) all sewer lines, pipes and other utility lines up to the point such pipes and lines enter the Unit;

(viii) all utility meters in the Community and any breaker boxes located outside Units in the Community;

(ix) all carports and parking spaces in the Community;

(x) all storage spaces;

(xi) trash removal; and

(xii) snow clearing.

(b) Maintenance of Common Elements by Owner. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or occupant, and the Owner or occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) Association Discretion. The Association may, in its sole discretion, assume the obligation for maintenance or repair of additional property, either real or personal, that lies within or outside the Community. The Association shall have the right to assume such obligation even if the obligation currently lies with Owners or other entities, provided however, the Association shall provide Owners with 15 days prior written notice of any such change. The Association, in its sole discretion, shall determine the time and manner in which any maintenance, whether required or assumed, shall be performed as well as the color or type of materials used.

(d) Damage to Unit by Association. The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(e) Liability of Association.

(i) The Association shall not be liable for injury or damage to person or property caused by or resulting from any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except:



(1) for injuries or damages arising after the Owner of a Unit has put the Association on written notice of a specific leak or flow from any portion of the Common Elements or device, pipe, drain, conduit, appliance or equipment for which the Association has a maintenance responsibility; and

(2) only if the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter.

(ii) The Association shall not be liable to the Owner of any Unit or such Owner's occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(iii) The Association shall not be liable to any Owner, or any Owner's occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section where such damage or injury is caused by an act of God, is not foreseeable or is not a natural result of the Association's failure to discharge its responsibilities.

(iv) No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 5.2 Owner's Maintenance Responsibility. Except as otherwise provided in Section 5.1 above, each Owner shall have the obligation to maintain, repair, improve, and replace all portions of the Owner's Unit. Such maintenance shall include, but not be limited to the following:

(a) all glass surfaces, windows, window screens, window frames (except for periodic painting and/or staining of the exterior window frames), casings and locks;

(b) all doors, doorways, door screens, door frames, hardware and locks and door chimes that are part of the entry system of the Unit (except for periodic painting and/or staining of exterior doors);

(c) any fireplace serving the Unit (except for the chimney box, chimney flue and chimney cap, which shall be the Association's obligation);

(d) any portion of the heating and air conditioning system, including the hot water heater, the air conditioning compressor, and the fan coil serving the Unit;

(e) any pipes, lines, ducts, conduits or other apparatus which serve only the Unit, from the point where the utilities enter the Unit (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits);

(f) all communications, television, telephone and electrical lines, receptacles and boxes serving any Unit whether located within or without the boundaries of the Unit;

(g) all breaker boxes located within the Unit boundaries;

(h) any Association approved additions or alterations made by the Owner to the Units or Limited Common Elements.

Each Owner shall maintain in a neat and clean condition the following: the deck, yard, porch, balcony and/or patio area adjoining any/or leading to a Unit.

The Association, upon written resolution of the Board, shall have the authority to require all Owners to do any act or perform any work involving portions of the Community which are the Owner's maintenance responsibility, which will, in the Association's sole discretion, conserve common utilities.

Section 5.3 Owner Responsibilities. Each Owner shall have the responsibility to:

(a) perform his or her maintenance responsibility in such manner so as not to unreasonably disturb other persons in Units;

(b) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(c) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants, guests, with the cost thereof to be added to and become part of the Owner's next chargeable Assessment;

(d) An Owner shall not be liable for injury or damage to person or property caused by or resulting from the Owner's maintenance or lack of maintenance of the Unit or any Limited Common Element appurtenant thereto except if the Owner has failed to exercise due care in performing said maintenance. An Owner shall not be liable to any

other Owner, or any Owner's occupant, guest or family or the Association for any damage or injury caused in whole or in part by the Owner's failure to discharge its responsibilities under this Section where such damage or injury is not a foreseeable, natural result of the Owner's failure to discharge its responsibilities.

(e) Each Owner shall have the responsibility to perform his or her maintenance responsibility in such manner so as not to unreasonably disturb or put at risk other persons in Units, other Units or the Common Elements.

Section 5.4 Mold. Each Owner shall be required to take necessary measures to retard and prevent mold from accumulating in the Unit, and the Common Elements, including but not limited to appropriate climate control, removal of visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces and cleaning of the same. No Owner shall block or cover any heating, ventilation or air conditioning ducts. Owners shall immediately notify the Board in writing of the following: (a) any evidence of water leaks, water infiltration or excessive moisture in a Unit; (b) any evidence of mold that cannot be removed by the Owner with a common household cleaner; (c) any failure or malfunction in heating, ventilation or air conditioning; (d) any inoperable doors, windows, heating, ventilation or air conditioning ducts. The receipt of notice by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners shall be responsible for any damage to his or her Unit and personal property, to any other Unit or the Common Elements, as well as any injury to the Owner or occupants resulting from the Owner's failure to comply with this section. Owners shall be responsible for all costs and expenses incurred by the Board to remove mold and/or damage within his or her Unit, to any other Unit or to the Common Elements if the Owner fails to meet the requirements of this Section.

Section 5.5 Inspection, Repair and Replacement of Designated Owner Maintenance Components. The Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of designated Owner maintenance components as may be set forth in the Rules and Regulations. If, in the Board of Directors' sole discretion, the component needs to be maintained, repaired or replaced, the Association may provide such maintenance, repair or replacement (even though such component may be the Owner's responsibility) and the cost of such periodic inspection, maintenance, repair or replacement may be assessed against the Owner of the Unit served by such component pursuant to the following Section of this Declaration.

Section 5.6 Failure to Maintain. If the Association determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, except in the case of an emergency, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Association.

Unless the Association determines that an emergency exists, the Owner shall have 10 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 10 days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as provided in this Section; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the Assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

If the Board determines that the need for maintenance or repair is a Common Expense and is caused through the willful or negligent act of any Owner, or occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or occupant's Unit, shall become a lien against the Unit, and shall be collected as provided in this Declaration for the collection of Assessments.

Section 5.7 Maintenance and Insurance Chart. As a Common Expense, the Association shall periodically cause to be prepared a chart summarizing the repair, replacement, maintenance and insurance obligations of Owners and the Association, as outlined in this Declaration. Such repair, replacement, maintenance and insurance chart shall be provided to all Owners.

Section 5.8 Waiver of Right to Sue. If any damage to a Unit or personal property contained therein is caused by or resulting from any portion of the Common Elements or any other Unit, or improvements contained therein, including but not limited to: (i) any water which may leak or flow from any portion of the Units or from any device, pipe, drain, conduit, appliance or equipment which the Owner is responsible to maintain hereunder, or (ii) any water, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any device, pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain thereunder, the Owner with the damaged Unit or personal property expressly waives the right to bring suit against the Owner or Association, as applicable, to recover monetary damages, except as set forth below. All Owners shall purchase insurance as set forth in Article X, and such incidents are to be resolved through the filing of an insurance claim.

## ARTICLE 6 COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 6.1 Creation of Association Lien and Personal Obligation to Pay Common Expense Assessments. Each Owner, by acceptance of a deed for a Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Common Expense Assessments and such other Assessments as imposed by the Association. Such Assessments, including fees, charges, late fees, attorney fees, fines and interest charged by the Association and additional fees charged by the managing agent,

including but not limited to, administration and witness fees, shall be the personal obligation of the Owner of such Unit at the time when the Assessment or other charges became or fell due. The annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration, all Common Expense Assessments shall be equally.

Section 6.2 Basis of Assessments. The Common Expense Assessment may be made on an annual basis against all Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 6.3 Annual Assessment. Common Expense Assessments shall be assessed equally and shall be due and payable in quarterly installments, or in any other manner (e.g., monthly, annually, etc.), as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 6.4 Special Assessments. In addition to the annual Assessments authorized above, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Elements, including fixtures and personal property related thereto. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials

Section 6.5 Supplemental Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

- (a) Those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit; improvement,

repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(b) Any extraordinary maintenance, repair, improvement and replacement costs of any area which the Association maintains required on fewer than all the Units;

(c) Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner (or his agents, guests, licensees, invitees or lessees);

(d) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(e) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Unit and are reasonably determined to be allocable to a particular Unit.

**Section 6.6** Application of Payments. All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Unit shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents, prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

**Section 6.7** Effect of Non-Payment of Assessments.

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly, from the due date, and the Association may assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may foreclose its lien and/or bring an action at law or in equity, or all of the same, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor. Likewise, the obtaining of a money judgment shall not preclude the foreclosure of the Association's lien so long as the judgment remains unsatisfied.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

**Section 6.8      Assignment of Rents.** If a Unit is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments due by that Owner to the Association. If the Assessments owed by the Owner of a rented Unit are more than 30 days delinquent, the Association may collect, and the occupant or lessee shall pay to the Board, the rent for any Unit owned by the delinquent Owner, or that portion of the rent equal to the amount due to the Association; provided, however, the lessee need not make such payments to the Association in excess of or prior to the due date for monthly rental payments unpaid at the time of the Board's request. The Association shall send notice to the Owner by any reasonable means at least 10 days prior to initiating the collection of rent from the Owner's occupant or lessee. The occupant and/or lessee shall not have the right to question the Association's demand for payment. Payment by the occupant or lessee to the Association will satisfy and discharge the occupant or lessee's duty of payment to the Owner for rent, to the extent of the amount paid to the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Unit rental or a waiver of the Owner's obligations as provided in the Declaration. The Association shall not exercise this power where a receiver has been appointed with respect to a Unit or Owner, nor in derogation of the exercise of any rights to rents by the holder of a first lien security interest of a Unit. If an occupant or lessee fails or refuses to pay rent to the Association as provided for in this Section, the Association shall have the right to bring an action for unlawful detainer for non-payment of rent under Colorado statutes, and the

costs and attorney fees incurred by the Association in connection with that action shall be collectable from the occupant or lessee in that action, and from the Owner of the Unit in the same manner as any other Assessment under this Declaration.

Section 6.9 Lien Priority. The lien of the Association under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 6.10 Borrowing. The Association shall have the power to assign its right to future income, including the right to assign its right to receive Common Expense Assessments.

#### ARTICLE 7 COVENANTS AND RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

All Property within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances or is inconsistent with applicable law. Any such modification or waiver must be in writing.

Section 7.1 Use/Occupancy. All Units within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association.

(a) Residential Units. Residential Units shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Unit and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited for Residential Units. In no instance shall a home occupation be



visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment, including semi trailers; (e) the use or rental of any part of a Residential Unit for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

(b) Business Units. Business Units may be used for any purpose permitted under local ordinances and Colorado state law.

Section 7.2 Use of Patios and Balconies. Nothing shall be hung from or placed outside a Unit, including patios and balconies, unless allowed in the Rules and Regulations.

Section 7.3 Restrictions on Animals and Pets. Pets may be kept by: (1) Owners, and (2) tenants with leases of one year or longer, in Residential Units pursuant to city and state law, *if* the Pet is not a nuisance to other residents. No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. The Association shall have the authority to adopt Rules and Regulations further restricting Pets, in its sole discretion. If a Pet is deemed a nuisance by the Association, the resident having control of the Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. When on Common Elements, Pets must be on a leash and under control. Pet waste upon the Common Elements or Limited Common Elements, must be removed promptly by the owner of the Pet or the person responsible for the Pet. Pets shall not be allowed to defecate or urinate on any patio or balcony in the Community. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

Section 7.4 Antennae. "Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is less than one meter in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive broadcast television broadcast signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on the Unit or Limited Common Elements which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station or similar device of any type shall be erected, installed or maintained on a Unit or Limited Common Elements.

Section 7.5 Nuisances. No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Unit or Common Element, or any portion of the Community by residents.

Section 7.6 Compliance With Other Laws. No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

Section 7.7 Parking, Storage, and Repairs.

(a) Parking upon the Common Elements shall be regulated by the Association.

(b) All parking spaces shall be used by the Owners or occupants for self-service parking purposes on a "first come, first serve" basis; provided, however, that: (i) no Owner or occupant shall park more than one vehicle (owned or leased by such Owner, a member of his or her family or occupant of his or her Unit) on the Common Element parking spaces without the prior written consent of the Association, (ii) long term vehicles shall be parked in the back spaces only, and (iii) during the Season, vehicles must be removed within 72 hours. The term "Season" may be defined in the Association's Rules and Regulations and/or any parking policy adopted by the Board.

(c) The following may not be parked or stored within the Community, unless authorized in writing by the Association or allowed by the Act as an "emergency vehicle": oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or other motorcraft and accessories thereto, self-contained motorized recreational vehicles, trucks over one ton, commercial vehicles, vehicles with commercial writing on their exteriors or other oversized types of vehicles or equipment as prohibited by rule or regulation. The foregoing may be parked as a temporary expedience for loading, delivery of goods or services, or emergency; provided, however, overnight parking of the same is

prohibited. This restriction shall not apply to trucks or other commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any improvement located thereon.

(d) No abandoned, unlicensed or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(e) No motor vehicle may impede the safe and efficient use of streets within the Community by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use streets or guest parking within the Community.

(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of the garages, except as permitted by the Association's Rules and Regulations or approval.

(g) Carports and designated parking spaces (designated as either a part of a Unit, a Limited Common Element or as a part of Common Elements) are restricted to use for access or as a parking space for vehicles.

(h) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(i) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(j) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit or dwelling, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(k) If a vehicle is towed or booted in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 7.8 Use of Common Elements. Nothing shall be altered on, constructed in, or removed from the Common Elements without the prior written approval of the Association. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written approval of the Association.

Section 7.9 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Association.

Section 7.10 Compliance with Insurance Requirements. Except as may be approved in writing by the Association, nothing shall be done or kept on the Community which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

Section 7.11 Restriction on Signs and Advertising Devices.

(a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Unit except such sign or signs as may be approved in writing by the Association.

(b) Signs intended to impact the outcome of an election or passage of a ballot issue must be displayed in accordance with the Association's Rules and Regulations.

(c) One professionally lettered "For Sale" or "For Rent" sign not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding six inches by six inches may be displayed inside a window of a Unit.

Section 7.12 No Restrictions on Mortgaging of a Unit. There are no restrictions on the right of the Owners to mortgage or otherwise encumber their Unit. There is no requirement for the use of a specific lending institution or particular type of lender.

Section 7.13 Map Restrictions. The restrictions, if any, included on the Map for the Property are incorporated herein by this reference.

Section 7.14 Rules and Regulations. In furtherance of the provisions of this Declaration and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time-to-time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 7.15 Compliance with Governing Documents. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

Section 7.16 Use of the Words Chatcau Aspen and Chateau Aspen Condominium Association. No resident or Owner shall use the words Chateau Aspen or Chateau Aspen Condominium Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## ARTICLE 8

### RIGHT OF FIRST REFUSAL

Section 8.1 Right of First Refusal by Owners. In the event any Owner of a Unit shall wish to sell or lease the same, and shall have received a bona fide offer therefor from a prospective purchaser or tenant, the remaining Owners shall be given written notice thereof together with an executed copy of such offer and the terms thereof. The selling Owner shall be obligated to provide this notice and may delegate this responsibility to the title company.

Such notice and copy shall be given to the Board of Directors for all of the Owners. All, or less than all, of the remaining Owners, through the Board of Directors, or a person named by them, shall have the right to purchase or lease the subject Unit upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase or lease is given to the selling or leasing Owner, and a matching down payment or deposit is provided to the selling or leasing Owner during the 20 day period immediately following the delivery of the notice of the bona fide offer and copy thereof to purchase or lease. The right to first refusal herein provided shall not apply to leases or sub-leases having a term of less than 120 days.

If the notice provides for the payment of non-cash consideration, the selling Owner shall also state in the notice the Owner's good faith estimate of the present market value of the non-cash consideration offered, so that the purchasing Owner(s) may pay the consideration in cash

equal to the selling Owner.

In the event any Owner shall attempt to sell or lease his or her Unit without affording the other Owners the right of first refusal herein provided, such sale or lease shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser or lessee.

The subleasing or subrenting of said interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The liability of the Owner under this Declaration shall continue, notwithstanding the fact that he or she may have leased or rented said interest as provided herein.

In no case shall the right of first refusal reserved herein affect the right of an Owner to subject his or her interest in the Unit to a trust deed, mortgage, or other security instrument.

The failure of refusal by the Board of Directors to exercise the right to purchase or lease shall not constitute or be deemed to be a waiver of such right to purchase or lease when an Owner receives any subsequent bona fide offer from a prospective purchaser or tenant.

Except as is otherwise provided in the following Section, and except upon a transfer of title to a Public Trustee or a first mortgagee, each grantor of a Unit, upon transferring or conveying his or her interest, shall incorporate in such instrument of conveyance an agreement that the grantee carry out the provisions of the "right of first refusal" sections set forth in this Declaration.

Section 8.2 Exemption From Right of First Refusal. In the event of any default on the part of any Owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure, including delivery of a deed to the first mortgagee in lieu of such foreclosure, shall be made free and clear of the provisions of Section 8.1 of this Declaration, and the purchaser, or grantee under such deed in lieu of such foreclosure, of such Unit shall be thereupon and thereafter subject to the provisions of the Governing Documents. If the purchaser following such foreclosure sale, or grantee under deed given in lieu of such foreclosure, shall be the then holder of the first mortgage, or its nominee, the said holder or nominee may thereafter sell and convey the Unit free and clear of the provisions of Section 8.1, but its grantee shall thereupon and thereafter be subject to all provisions thereof.

The following transfers are also exempt from the provisions of Section 8.1:

- (a) The transfer by operation of law or deceased joint tenant's interest to the surviving joint tenant(s);
- (b) The transfer of a deceased's interest to a devisee or devisees by will or his or her heirs at law under intestacy laws;

(c) The transfer of all or any part or a partner's interest as a result of withdrawal, death, or otherwise, to the remaining partners carrying on the partnership business and/or to a person or persons becoming partners; a transfer of all or part of a partner's or partners' interests between one or more partners and/or to persons becoming partners;

(d) The transfer of a corporation's interest to be persons formerly owning the stock of the corporation as the result of a dissolution. A transfer to the resulting entity following a corporate merger or consolidation; provided, however, that at least 50% of the stock of the resulting entity is owned by the stockholders of the corporation formerly owning the Unit.

If the Owner of a Unit can establish to the satisfaction of the managing agent or Board of Directors that a proposed transfer is not a sale or lease, then such a transfer shall not be subject to the provisions of this Section.

**Section 8.3 Certificate of Compliance - Right of First Refusal.** Upon written request of any prospective transferor, purchaser, tenant, or an existing or prospective mortgagee of any Unit, the managing agent, or Board of Directors of the Association shall forthwith, or where time is specified, at the end of the time, issue a written and acknowledged certificate in recordable form, evidencing:

(a) With respect to a proposed lease or sale under Section 8.1, that proper notice was given by the selling or leasing Owner and that the remaining Owners did not elect to exercise their option to purchase or lease;

(b) With respect to a deed to a first mortgagee or its nominee in lieu of foreclosure, and a deed from such first mortgagee or its nominee, pursuant to Section 8.2, that the deeds were in fact given in lieu of foreclosure and were not subject to the provisions of Section 8.1;

(c) With respect to any contemplated transfer which is not in fact a sale or lease, that the transfer will not be subject to the provisions of Section 8.1;

Such a certificate shall be conclusive of evidence of the facts contained therein.

## **ARTICLE 9 MODIFICATIONS TO UNITS**

**Section 9.1 Alterations of Units or Limited Common Element Balconies Without a Change in Allocated Interests or Boundaries of a Unit.** Owners shall have the right, with written approval from the Board, and subject to the provisions of this Article, to make the following alterations to their Units or Limited Common Element balconies:

(a) Interiors. Owners have the right to make any improvements or alterations to the interior of his or her Unit as provided for in this Article.

(i) Decoration of Unit. The rights and restrictions in this Article shall not be construed to restrict a Member's right to decorate his or her Unit as he or she should so determine; provided, however, that to the extent such decoration (including but not limited to window coverings) is visible from the exterior of any Unit and detracts, in the reasonable judgment of the Board, from the aesthetic or architectural integrity of the Community, the Member may be required to undertake such reasonable measures as the Board may determine to eliminate such detraction.

(ii) Nonstructural and Structural Interior Alterations. The rights and restrictions in this Article shall not be construed to restrict a Member's right to move, remove, alter or change any interior, nonstructural wall or partition, or change the use and/or designation of any room within his or her Unit; provided, however, that such change shall not affect the structural integrity of the Community or mechanical or utility systems of the Community. No structural alterations to any Unit or any Common or Limited Common Elements shall be done by any Owner, without the prior written approval of the Board.

(iii) Combination of Units. Any Owner may physically combine the area or space of one Unit with the area or space of one or more adjoining Units, both of which Units are owned by such Owner, with the written consent of the Board of Directors (hereinafter referred to as a "Combined Unit"). For the duration of any such combination, any walls, floors or other structural separations between the Units so combined or any space which would be occupied by such structural separations but for the combination of such Unit, shall be deemed to be Limited Common Elements, provided, however, that such walls, floors or other structural separations of such space shall automatically revert to their original status if the Combined Units thereafter become subject to separate ownership. Upon any combination of Units as provided for herein, the Owners of the Combined Units shall have the same number of votes as the number of Units so combined (as if the Units had not been combined) and shall be personally obligated for each of the separate Assessment obligations of all such Combined Units.

(b) Exteriors. Owners have the right to make improvements or alterations to the exterior Limited Common Element patio or deck area, as provided for in this Article.

(c) Limitations. Rights of Owners under the prior provisions are limited by the following restrictions:



(i) General Restriction. The alterations and modifications can not impair the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community, enclose a Limited Common Element as improved interior space or as a part of a Unit, or violate any of the provisions of this Article.

(ii) Exterior Changes. No porch, garden or yard enclosure, awning, screen, sign, address numbers, banner or other device, and no exterior change, addition, structure, projection, decoration or other feature shall be erected, applied to, placed upon or attached to any Unit, or any part thereof or upon any Common or Limited Common Elements without, in each instance, written approval of the Board.

(iii) Painting, Decals, and Window Coverings. No painting, attaching of decals or other decoration shall be done on any exterior part or surface of any Unit, or on the interior surface of any window, nor shall any window coverings other than a neutral color be installed inside a Unit, without written approval of the Board, except for holiday decorations, holiday displays, holiday flags and/or holiday signs, which shall be expressly allowed, subject to the Board's discretion and pursuant to the Rules and Regulations.

(d) Application and Approval Requirements. All changes allowed for under the above authority may only be made by the Owners of those Units, as applicant, after application to and approval by the Board. The application and approval process shall include at least the following:

(i) Signatures. The signatures of all of the Owners of the Units that are proposed to have changes must be on the application;

(ii) Representations. The Owners must represent and warrant that the proposed modifications do not affect the structural integrity, electrical systems, mechanical systems, utilities, lessen the support of any portion of the Community or violate any of the provisions of this Article;

(iii) Contents of the Application. The application must contain at least the following:

(1) evidence sufficient to the Board that the applicant has complied with and/or will comply with all local rules and ordinances and that the proposed changes do not violate the terms of any document evidencing a security interest of a lender in any of the applicant's Units;

- (2) all necessary and proper permits and approvals from the appropriate governmental authorities have been or will be obtained;
- (3) proof that the contractor(s) of the Owner is/are licensed and adequately insured; and
- (4) such other information as may be reasonably requested by the Board.

(iv) Agreement May Be Required. The Board may require the Owner's written agreement (in the form required by the Association) providing for the following:

- (1) for the Owner to be responsible, now and/or in the future, for any structural deficiencies or problems, electrical deficiencies or problems, mechanical structural integrity, electrical systems, utility or mechanical deficiencies or problems or problems associated with a lessening of support of any portion of the Community, or for violations of any of the provisions of this Article, all as may reasonably be determined by the Board;
- (2) for the Owner's agreement to be responsible for ongoing maintenance, repair, replacement and improvement of any or all of the proposed additions/modifications of the Owner. The Board may require Owners to be responsible for all or some of the maintenance, repair, replacement and improvement of the proposed modifications;
- (3) for the Owner's payment of the fees and costs of the Board, together with a deposit against fees and costs which the Board will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board, in advance of any billing for costs and expenses of the Board;
- (4) for reasonable advance notice by the Owner for the work to be performed, from the Owner or from the Owner's contractor; and
- (5) satisfaction of all conditions as may be reasonably imposed by the Board.

Section 9.2 Alterations of Units or Limited Common Element Balconies With a Requested Change in Allocated Interests or the Boundaries of a Unit. Subject to the provisions of this Article, and pursuant to the procedures described in section 38-33.3-217 of the Act, the following changes may be made, after application to the Board by the Owners of those Units and

written approval by the Board:

- (a) Boundary Change. Boundaries of Units may be changed as provided for in this Article.
- (b) Conversion of Limited Common Element to Unit. Boundaries of a Unit, to include a former Limited Common Element deck or patio on which an Owner has been approved to make alterations (as provided for in this Section of this Article), may be changed, as provided for in this Article and with approval of at least 67% of the votes in the Association.
- (c) Limitations. No relocation of Unit boundaries shall be effected without the necessary amendments to the Declaration and Map, as provided for in this Article with those amendments, executed and recorded by the Association, pursuant to section 38-33.3-217 of the Act.
- (d) Application and Approval Requirements. The Owners of the Units, as the applicant, must submit an application to the Board, which must be approved by the Board before the Owner proceeds, including all of the criteria set forth above and the following additional items (if application process is used above) and must also enter into an agreement with the Association, including the items set forth above:
  - (i) Reallocations. The proposed reallocation of interests, if any, which may include a re-allocation of Common Expense liability, to account for an increase in size to the Unit or Units of the Owner, if sought by the applicant or required by the Board; and
  - (ii) Forms of Amendments. The proposed form for amendments to this Declaration, including the Map, as may be necessary to show the altered boundaries, and their dimensions and identification.

Section 9.3 Maintenance Responsibilities. For all modifications made to a Unit by an Owner, whether made under the authority and with the approvals under this Article, or whether made previously or without approvals required under this Article, the Owner shall be responsible for maintenance, repair and replacement of all modifications unless the Association expressly assumes any of those responsibilities in writing.

Section 9.4 Acknowledgment of Owners. Owners acknowledge, accept and agree to the following:

- (a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Board;

(b) Owners shall immediately comply with any request by the Board for additional information relating to an improvement prior to the Board's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Board approval, if previously granted;

(c) Board approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;

(d) Owners shall notify the Board of completion of the improvement's installation or construction within five days of such completion;

(e) Upon completion of an improvement, Owners authorize the Board or its representative(s) to enter onto the Unit for exterior inspection;

(f) Failure of an Owner to notify the Board of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the Board's approval;

(g) If the improvement as built does not conform to the improvement as approved by the Board, the Board's approval will be deemed withdrawn, and upon written request of the Board, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

(h) In the event of withdrawal of Board approval for any reason(s) cited in this Section, and upon written request from the Board, the Owner, at his or her expense and cost, shall promptly restore the Unit to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

Section 9.5 Architectural Criteria. The Board shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Unit shall comply with the requirements set forth in this Declaration. The approval or consent of the Board on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of exterior appearance with neighboring structures and Units, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Board may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 9.6 Architectural Guidelines. The Board may adopt architectural guidelines from time to time, which guidelines may be included in or with any Rules and Regulations of the Association.

Section 9.7 Reply and Communication. The Board shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the Board fails to take any action on submitted plans and specifications within 30 days after the Board has received the plans and specifications, approval shall be deemed to be approved. All communications and submittals shall be addressed to the Board in care of the Association.

Section 9.8 Conditions of Approval. In the discretion of the Board, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

Section 9.9 Fees and Costs. Owners shall be obligated to pay all fees and costs incurred by the Board in reviewing and effectuating an Owners's application, whether by deposit, or subsequent invoice from the Association.

Section 9.10 Commencement and Completion of Construction. All improvements approved by the Board must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Board, unless the Board gives a written extension for commencing the work. Additionally, except with written Board approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Board shall be completed within six months of commencement.

Section 9.11 Variances. The Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

Section 9.12 Right to Appeal. The Board has the right to designate a committee to take over the duties and obligations of the Board in this Article. If the Board of Directors designates such committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the committee to the Board of Directors. The Board of Directors shall review the decision of the committee pursuant to the criteria set forth in this Article and/or the architectural guidelines. Any decision of the committee may be overruled and reversed by a majority of the directors by a written decision setting forth the reasons for the

reversal when the directors conclude that the committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 9.13 Waivers. The approval or consent of the Board, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Board as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 9.14 Liability. The Board and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. The Board shall not bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements.

Section 9.15 Records. The Association shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day according to any policy adopted by the Board.

Section 9.16 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

## ARTICLE 10

### INSURANCE/CONDEMNATION

Section 10.1 Insurance to be Carried by the Association. The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

**Section 10.2 Association Hazard Insurance on the Units and Common Elements.**

(a) The Association shall obtain and maintain hazard insurance covering full replacement cost, loss, damage or destruction by fire or other casualty to the Units and the Common Elements and the other property of the Association. The hazard insurance of the Association shall include installations in the Units to the standard and quality of original non-upgraded construction, including, by way of example, but not limited to, bathroom and kitchen fixtures, built-in cabinets, counters, cupboards, dishwashers, large primary ovens/ranges, air conditioners, and wall, floor and window coverings, and excluding betterments and upgrades.

(b) All insurance purchased by the Association pursuant to this Section shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners, and their respective mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear.

(c) The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

(d) The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at his or her own expense.

**Section 10.3 Association Flood Insurance.** The Association shall obtain flood insurance to the extent required by the Federal Emergency Management Agency (FEMA) or any other governmental agency.

**Section 10.4 Association Liability Insurance.** The Association shall obtain a policy of public liability and property damage liability insurance covering the Common Elements, in such limits as the Board may determine from time to time, but not in any amount less than a combined single limit of \$1,000,000.00. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Community. All liability insurance shall name the Association as the insured.

**Section 10.5 Association Fidelity Insurance.** The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the

maximum funds that will be in the control of the Association, its officers, directors, trustees and employees.

Section 10.6 Association Worker's Compensation and Employer's Liability Insurance. The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 10.7 Association Directors' and Officers' Personal Liability Insurance. The Association shall obtain directors' and officers' personal liability insurance to protect the directors, officers, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting on behalf of the Association.

Section 10.8 Other Association Insurance. The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 10.9 Miscellaneous Terms Governing Insurance Carried by the Association. The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

- (a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.
- (b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.
- (c) All policies of insurance shall contain waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without at least 30 days prior written notice to all of the Owners, holders of first lien security interests and the Association.
- (d) All Association policies of hazard insurance shall contain ordinance or law coverage, demolition cost coverage, increased cost of construction coverage and inflation guard insurance;
- (e) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all Eligible Mortgage Holders at least 10 days prior to the expiration of the then-current policies.



(f) All liability insurance shall include the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(g) In no event shall any casualty insurance policy contain a co-insurance clause.

(h) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(i) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner, only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the 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 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.

(j) Prior to obtaining any policy of casualty insurance or renewal thereof, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of the Units and the Common Elements, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In no event shall any casualty insurance policy contain a co-insurance clause.

Section 10.10 Insurance Each Owner is Advised to Maintain. Owners are required to carry insurance on improvements and betterments to a Unit, and personal property in their Unit for their benefit and at their expenses, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, the Association's insurance coverage, as specified hereunder, does not obviate the need for Owners to obtain insurance for their own benefit.

Section 10.11 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 10.12 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage. The Association may indemnify its managing agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

Section 10.13 Annual Association Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually.

Section 10.14 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. Proceeds must be distributed first for the repair or restoration of the damaged property. The Owners and holders of first lien security interest are not entitled to receive payment of any portion of the proceeds. The Association may determine how a surplus of proceeds, if any, shall be utilized.

Section 10.15 Responsibility for Payment of Deductible Amount. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is the liability of an Owner, his family, guests, or invitees, as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be due within 10 days of notification and shall be considered a Common Expense Assessment allocated directly to the Unit and shall be collected as provided in this Declaration.

(b) The Owner shall pay or absorb the deductible for any loss to the Unit that would be the responsibility of the Owner in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible. If a negligent Owner fails to pay the deductible for damage to a Unit, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

Section 10.16 Duty to Repair. Any portion of the Community for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

Section 10.17 Condemnation and Hazard Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 10.18 Insurance Assessments. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 10.19 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary in this Declaration, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of Assessments owed to the Association under this Declaration, then the Association may retain and apply such proceeds recovered to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

## ARTICLE 11 SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 11.1 General Provisions. The provisions of this Article are for the benefit of holders, insurers, or guarantors of holders of first lien security interests recorded within the Community. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. Eligible insurers and guarantors of a first lien security interest shall have the same rights as an Eligible Mortgage Holder.

Section 11.2 Special Rights. Eligible Mortgage Holders shall be entitled to: (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association, including any annual audited

financial statement; (d) receive written notice of all meetings of the Members of the Association; (e) designate a representative to attend any such meetings; (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration; (h) 30 days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; (i) 30 days written notice prior to the effective date of termination of professional management of the Association or the Common Elements, when professional management had been required previously under the legal documents for the Community or by an Eligible Mortgage Holder; and (j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or to the Unit on which the Eligible Mortgage Holder holds a security interest, if the cost of reconstruction exceeds \$20,000.00 and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Units.

Section 11.3 Special Approvals. Unless at least 51% of the Eligible Mortgage Holders of first lien security interests (based on one vote for each mortgage owned) of Units in the Association and requisite Owners have given their written approval, neither the Association nor any Member shall (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such Property by the Association shall not be deemed within the meaning of this provision); (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards; (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to architectural approval of improvement of Units, including the architectural design of the exterior appearance of Units, or the upkeep of the Common Elements; (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration; (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed; (f) take action to terminate the legal status of the Community after substantial destruction or condemnation occurs; (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for the Community or by an Eligible Mortgage Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Mortgage Holder of a first lien security interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

Section 11.4 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien security interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Units.

## ARTICLE 12 GENERAL PROVISIONS

### Section 12.1 Compliance and Enforcement

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

- (i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit;
- (ii) suspending the right to vote and the right to use Common Elements;
- (iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;
- (iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Unit.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 12.2 Attorney Fees. If an Owner fails to pay any Assessment or any other amount due to the Association as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner, shall be charged as an Assessment and shall constitute a lien against the Unit.

Section 12.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 12.4 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 12.5 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the eligible Association vote and 51% of Eligible Mortgage Holders. Any such amendments shall be certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Pitkin County, State of Colorado of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 12.6 Amendment of Declaration by the Association. The Association shall have the authority to amend, revise, remove, repeal or add any provision to this Declaration, without Owner or mortgagee approval, in order to conform with any applicable state, city or federal law, and/or to bring the Declaration into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Section 12.7 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 12.8 Interpretation. The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 12.9 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 12.10 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.11 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

IN WITNESS WHEREOF, the undersigned, being the president and the secretary of Chateau Aspen Condominium Association, hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from owners representing 66 2/3% of the Owners of the votes within the Chateau Aspen Community and 100% of the first mortgagees, as evidenced by written instruments filed with the records of the Association, or alternatively, has obtained court approval of this Declaration pursuant to the provisions of the Act, Section 217(7).

Chateau Aspen Condominium Association,  
a Colorado nonprofit corporation

By: James Ferry III  
President

ATTEST:

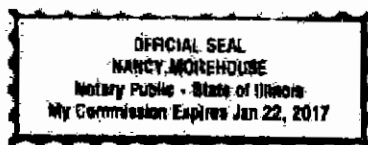
By: \_\_\_\_\_  
Secretary

STATE OF COLORADO )  
FALLING ST ) ss.  
COUNTY OF Rock )

The foregoing Declaration was acknowledged before me on this 21 day of June, 2013, by James Ferry III as President of Chateau Aspen Condominium Association a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 1/22/17



Nancy Morehouse  
Notary Public



Section 12.10 Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In the case of conflict between the Articles of Incorporation and Bylaws, the Articles of Incorporation shall control.

Section 12.11 Challenge to this Amendment. All challenges to the validity of this amendment must be made within one year after the date of recording of this document.

IN WITNESS WHEREOF, the undersigned, being the president and the secretary of Chateau Aspen Condominium Association, hereby certify that the Association has obtained written approval of this Amended and Restated Declaration from owners representing 66 2/3% of the Owners of the votes within the Chateau Aspen Community and 100% of the first mortgagees, as evidenced by written instruments filed with the records of the Association, or alternatively, has obtained court approval of this Declaration pursuant to the provisions of the Act, Section 217(7).

Chateau Aspen Condominium Association,  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
President

ATTEST:

By: \_\_\_\_\_

Secretary

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

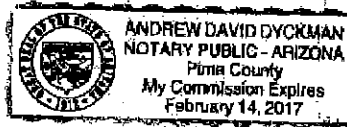
The foregoing Declaration was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as President of Chateau Aspen Condominium Association a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

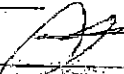
STATE OF Arizona )  
~~COLOMADO~~ ) ss.  
COUNTY OF Pima )



The foregoing Declaration was acknowledged before me on this 29 day of April,  
2013, by John Bischoff as Secretary of Chateau Aspen Condominium  
Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: Feb 14, 2017

  
\_\_\_\_\_  
Notary Public

RECEPTION#: 600641, 06/24/2013 at 02:05:03 PM, 51 OF 51,  
Janice K. Vos Caudill, Pitkin County, CO

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

Lots P, Q, R, and S, Block 100, as divided into Units 1 through 21, and 21A, as identified on Map filed for the property in and to the City and Townsite of Aspen, County of Pitkin, State of Colorado.

**AFTER RECORDING PLEASE RETURN TO:**

HindmanSanchez P.C.  
5610 Ward Road, Suite 300  
Arvada, CO 80002  
Attn: MMG