

CONDOMINIUM DECLARATION

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FOR

TRACY K. BAKER

STONE CANYON CONDOMINIUMS ARAPAHOE COUNTY

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**CONDOMINIUM DECLARATION**  
**FOR**  
**STONE CANYON CONDOMINIUMS**

WHEREAS, BCORP Stone Canyon LLC, as Nominee, a Colorado limited liability company, hereinafter called Declarant, is the owner of certain real property situated in the County of Arapahoe, State of Colorado, more fully described in Exhibit "A" attached hereto and made a part hereof ("Real Property"); and

- WHEREAS, Declarant desires to establish a condominium project under the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et seq., as amended from time to time ("CCIOA," "Common Interest Act" or the "Act"); and

WHEREAS, Declarant does hereby establish a plan for the ownership in fee simple of the Real Property estates constructed on said Real Property consisting of the area or space contained in each of the air space units in the Building improvements currently constructed and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining property hereinafter defined and referred to as the Common Elements.

NOW, THEREFORE, Declarant hereby submits the above-described Real Property and Building to condominium ownership under and pursuant to the provisions of the Colorado Common Interest Ownership Act, as it may be amended from time to time, and hereby publishes and declares that the following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the Real Property and Building, and shall be a burden and a benefit to Declarant, Declarant's respective heirs, personal representatives, successors and assigns, and any persons acquiring or owning an interest in the Real Estate and Building, their grantees, successors, heirs, personal representatives, executors, administrators, devisees or assigns.

**ARTICLE 1**  
**DEFINITIONS.**

1.1 **Allocated Interests.** "Allocated Interests" shall mean, with respect to each Condominium Unit, a fraction or percentage of the undivided interests in the Common Elements and of the Common Expenses of the Association allocated to such Condominium Unit and a percentage of the votes in the Association allocated to such Condominium Unit. As more fully set forth subsequently in this Declaration, Allocated Interests for each Condominium Unit have been determined with respect to each of the following: undivided interests in all Common Elements for each Condominium Unit (in accordance with Article 2 and Exhibit "B" hereof); liability for Project Common Expenses (in accordance with Article 7 and Exhibit "B" hereof); and voting rights in the Association (in accordance with Article 5 hereof).



1.2 **Association.** "Association" shall mean and refer to the Stone Canyon Condominium Association, Inc., a Colorado nonprofit corporation, its successors and assigns. The Association shall act by and through its Executive Board and officers unless the Articles of Incorporation or Bylaws of the Association or this Declaration specifically requires otherwise.

1.3 **Building.** "Building" means the residential building presently situated on the Real Property, together with (i) any additions or modifications that may hereafter be made thereto; (ii) any further buildings that may hereafter be constructed upon or moved onto the Real Property, and (iii) all improvements and fixtures contained within such buildings.

1.4 **Bylaws.** "Bylaws" means the instrument adopted by the Association for its regulation and management, together with any amendments thereto.

1.5 **Common Elements.** "Common Elements" shall mean the Real Estate and all improvements constructed thereon, except the Units, and shall include without limitation the following:

(a) The Real Estate; and

(b) The Building (including, but not by way of limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, flues, hallways, roofs, stairs, stairways, and entrances and exits, and the mechanical installations of the Building consisting of the equipment and materials making up any services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating, which exist for common uses, including the pipes, vents, ducts, flues, chutes, conduits, wires, and other similar utility installations used in connection therewith), except for the Units; and

(c) Any sidewalks, walkways, paths, grass, shrubbery, trees, driveways, private streets, parking areas, signs and supporting structures for signs, landscaping and gardens, if any, located on the Real Estate and any such areas situated on real estate owned by others as to which the Owners or any of them have a right of use by easement or license; and

(d) The tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus, installations and equipment of the Building existing for the common use of some or all of the Owners; and

(e) In general, all other parts of the Project existing for the common uses of some or all of the Owners and all other parts of the Project necessary or convenient to its existence, maintenance or safety or normally in common use.

1.6 **Common Expenses.** "Common Expenses" shall mean and refer to all expenditures made or liabilities incurred by or on behalf of the Association, together with

any allocations by the Association to reserves, and shall include Project Common Expenses, as more fully defined in Section 7.2 hereof.

1.7 **Condominium Map.** "Condominium Map" shall mean and refer to the condominium map(s) and/or plat(s) of the Real Estate and improvements that are subject to this Declaration and which are designated as the Condominium Map for the Stone Canyon Condominiums, recorded or to be recorded in the records of the office of the Clerk and Recorder of the County of Arapahoe, Colorado. More than one Condominium Map or supplement thereto may be recorded, and, if so, then the term "Condominium Map" shall collectively mean and refer to all of such condominium maps and supplements thereto.

1.8 **Condominium Unit.** "Condominium Unit" shall mean and refer to a Unit, together with all fixtures and improvements therein contained and together with the undivided interest in all of the Common Elements as shown on Exhibit "B" attached hereto and incorporated herein by this reference.

1.9 **Declarant.** "Declarant" shall mean and refer to BCORP Stone Canyon LLC, As Nominee, a Colorado limited liability company, its successors and assigns, if such successors and assigns are designated by the then-Declarant to serve as a Declarant for any specified purposes or for all purposes under this Declaration, in a written instrument duly executed by the then Declarant and the designated successor or assignee and recorded in the office of the Clerk and Recorder of the County of Arapahoe, Colorado.

1.10 **Declaration.** "Declaration" shall mean and refer to this Condominium Declaration, as it may be amended from time to time.

1.11 **First Mortgage.** "First Mortgage" shall mean a Security Interest on a Condominium Unit which has priority over all other Security Interests in the Condominium Unit.

1.12 **First Mortgagee.** "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

1.13 **General Common Elements.** "General Common Elements" shall mean and refer to all of the Common Elements except the Limited Common Elements. The General Common Elements may not be conveyed or encumbered except as permitted under the Common Interest Act; provided, however, that the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project will not be deemed to be a conveyance.

**1.14 Limited Common Elements.** "Limited Common Elements" shall mean and refer to those parts of the Common Elements which are either limited to and reserved for the exclusive use of the Owner or Owners of a particular Condominium Unit or are limited to and reserved for the common use of the Owners of more than one, but fewer than all, of the Condominium Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony or patios on individual floors as designated on the Condominium Map.

**1.15 Member.** "Member" shall mean and refer to each Owner of a Condominium Unit; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Condominium Unit.

**1.16 Owner.** "Owner" shall mean and refer to any record owner (including Declarant and including a contract vendor), whether one or more persons or entities, of a fee simple title interest to any Condominium Unit; but excluding, however, any such record owner having such an interest merely as security for the performance of an obligation (unless such person has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof).

**1.17 Project.** "Project" shall mean and refer to the totality of all the Real Estate, Building, Condominium Units and Common Elements.

**1.18 Real Estate.** "Real Estate" shall mean and refer to that certain property described on Exhibit "A" attached hereto and incorporated herein by this reference, but expressly excluding certain development rights appurtenant thereto, which Declarant has specifically reserved as more fully set forth in Article 17 hereof.

**1.19 Security Interest.** "Security Interest" shall mean an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

**1.20 Special Declarant Rights.** "Special Declarant Rights" shall mean and refer to the development and other rights expressly reserved for the benefit of Declarant in accordance with the terms and conditions of this Declaration, including but not limited to Article 17 hereof.

**1.21 Unit.** "Unit" shall mean and refer to the air space contained within the enclosed rooms occupying part of a floor or floors in the Building, and bounded by the unfinished interior surfaces of the perimeter walls (or the demising walls, if two or more Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floor in respect of the Units containing more than one level), unfinished interior surfaces of

ceilings (or the uppermost ceilings, in respect of the Units containing more than one level), and the unfinished interior surfaces of windows and window frames, doors and door frames of the Building, and which is separately identified on the Condominium Map. The term "Unit" does not include any utility facility running through the Unit that serves more than one Unit or any other Common Element or part thereof located within the Unit. In the case of walls, floors and ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements.

## ARTICLE 2

### DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

2.1 **Division into Condominium Units.** The Project is hereby divided into \_\_\_\_\_ ( ) separate Condominium units, each of which shall have an undivided interest in all of the Common Elements as identified on Exhibit "B" attached hereto, which undivided interest has been computed for each Unit by dividing the actual square footage of such Unit by the total actual square footage of all Units without regard to balconies or other Limited Common Elements, and then multiplying the quotient derived thereby by 100 to obtain the percentages contained on Exhibit "B" under the column heading "Undivided Interest in All Common Elements."

2.2 **Inseparability.** Except as provided in Section 2.4 or Article 13 hereof, each Condominium Unit, appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Condominium Unit. Except as otherwise provided in Article 13, every conveyance, transfer, devise, lease, encumbrance or other disposition of a Condominium Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Condominium Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

2.3 **Non-Partitionability.** The Common Elements shall be owned in common by all of the Owners and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment of the Condominium Unit, each Owner specifically waives any right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this Section 2.3 may be conclusively pleaded as a bar to the maintenance of such an action. Any violation of this Section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs, expenses and all damages which the Association incurs in connection therewith. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary

transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void.

#### **2.4 Restricted Right to Relocate Boundaries of Condominium Units.**

Except as hereinafter specifically provided with respect to Declarant, no Owner or Owners may relocate the boundaries of any Condominium Unit(s) except by amendment to this Declaration in accordance with the applicable requirements hereof, including but not limited to the prior approvals mandated by Article 16. In addition, any relocation of boundaries shall be done in accordance with the procedures set forth in the Common Interest Act, in particular Sections 212 and 213. All costs incurred in connection with such relocation of boundaries shall be borne by the Owner or Owners of the affected Condominium Units, including all costs incurred by the Association in connection therewith. In connection with any such relocation of boundaries, the Owners of the affected Condominium Units shall have the right, with the prior written approval of the Executive Board of the Association, to redesignate, as part of a Unit or as a Limited Common Element, any portion of the Common Elements or any walls, floors or other separations between the affected Condominium Units, which may be necessary or appropriate to accomplish such combination or division; provided, however, that the exercise of the rights granted herein shall be subject to the prior written consent of any First Mortgagee having an interest in any such affected Condominium Units, in addition to the other approvals required by this Section 2.4 and Article 16. If Condominium Units are combined, the undivided interest in the Common Elements allocated to the combined Condominium Unit shall be the sum of the undivided interests of the Condominium Units that were combined. Any previously combined Condominium Units which are later divided shall be reinstated to the undivided interests in the Common Elements which they had prior to the combination. An amendment to the Declaration and Map implementing a relocation of Unit boundaries under this Section shall be executed and filed in accordance with the Common Interest Act. Notwithstanding any other provision of this Section 2.4, Declarant shall have the rights expressly provided in Article 17, and no consent will be required from the Association, the Executive Board or any other person for Declarant to exercise such rights and any amendment to this Declaration or the Map that is required to implement such combination or division may be executed solely by Declarant. Declarant's development rights set forth above shall terminate on the first to occur of the tenth (10th) anniversary of the date this Declaration is recorded or the date of conveyance of the last Condominium Unit by Declarant to the first purchaser thereof (other than Declarant).

### **ARTICLE 3 CONDOMINIUM MAP**

**3.1 Recording.** The Condominium Map shall be recorded in the office of the Clerk and Recorder of the County of Arapahoe, Colorado, prior to conveyance of the first Condominium Unit shown on such Condominium Map.

3.2 **Content.** Each Condominium Map shall depict and show all items required under Section 209 and elsewhere in the Common Interest Act, including but not limited to: the legal description of the land and a land survey plat thereof; the location of the Building in reference to the exterior boundaries of the land; the floor and elevation plans; the location of the Units within the Building, and the location of the Common Elements, both horizontally and vertically; to the extent not provided in this Declaration, the allocation of Limited Common Elements to a specific Unit or Units; and the Condominium Unit designations. Each Condominium Map shall contain the certificate of a registered land surveyor (unless otherwise permitted under the Common Interest Act) certifying that the Condominium Map substantially depicts the location and the horizontal and vertical measurements of the aforesaid information, together with all other required information, and an affirmation that the Condominium Map was prepared subsequent to substantial completion of the improvements shown thereon. In interpreting the Condominium Map, the existing physical boundaries of each Unit, as constructed, shall be conclusively presumed to be its boundaries.

3.3 **Amendments.** Declarant hereby reserves unto itself the right, from time to time, without obtaining the consent or approval of any Owner or First Mortgagee, to amend any Condominium Map in order to conform such Condominium Map to the actual location of any improvement(s) constructed, installed or erected on the Real Estate, or to establish and designate any General Common Elements as Limited Common Elements. The rights accorded to Declarant in this Section 3.3 shall expire on the date of conveyance of the last Condominium Unit by Declarant to the first purchaser thereof (other than Declarant), or seven (7) years after this Declaration is recorded, whichever occurs first. The Condominium Map may also be amended, from time to time, as provided in Section 2.4 hereof or in accordance with the provisions of this Agreement or the Common Interest Act relating to amendments to the Declaration.

#### **ARTICLE 4 OWNER'S PROPERTY RIGHTS IN COMMON ELEMENTS**

4.1 **Right of Ingress and Egress.** Every Owner, tenant and their respective family members, guests, invitees and licensees shall have a right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements allocated to such Owner's Condominium Unit, plus a right and easement of ingress and egress over, across and upon the General Common Elements and those Limited Common Elements allocated to such Owner's Condominium Unit, for the purpose of entering and exiting such Owner's Condominium Unit, parking areas, any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Condominium Unit; provided, however, that such rights and easements shall be subject to the following:

(a) The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations contained in this Declaration and the Condominium Map; and

(b) The right of the Association to suspend the voting rights and any and all rights of any Member to the use of any recreational or other facilities for any period during which any Association assessment against such Member or against such Member's Condominium Unit remains unpaid and, for any period of time which the Association may deem to be appropriate, for such Member's infraction, or the infraction by any Owner's tenant, any member of such Member's or tenant's family or such Member's or tenant's guests, licensees or invitees, of any rule or regulation of the Association; and

(c) The right of the Association to adopt, from time to time, rules and regulations concerning the Condominium Units, use of the Common Elements, and/or any property owned by the Association, and any facilities located thereon, as the Association may determine is necessary or prudent; and

(d) The right of the Association to grant permits, licenses and easements over the Common Elements for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project.

**4.2 Limited Common Elements.** Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements allocated to his Condominium Unit.

**4.3 Recreational Facilities.** The recreational facilities currently existing on the Real Estate or, at the time of recording this Declaration, are planned to be built by Declarant on the Real Estate are as follows: pool and cabana.

**4.4 Parking Spaces.** The common area parking spaces for the Project ("Parking Spaces" or "Spaces") shall be as shown on the Condominium Map, as the same may be expanded by the Association and shall constitute General Common Elements. Each Unit shall have its own garage, which shall constitute Limited Common Elements.

## **ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**5.1 Membership.** Every Owner of a Condominium Unit shall be a Member of the Association and shall remain a Member for the period of his ownership of a Condominium Unit. Each Condominium Unit shall be entitled to one vote and the vote for such Unit shall be exercised by the Owner or Owners as they determine.

**5.2 Executive Board.** The affairs of the Association shall be managed by an Executive Board which shall consist of the number of members which is set forth in the

Association's Articles of Incorporation, as amended ("Articles"), or Bylaws, as amended ("Bylaws") from time to time. From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Executive Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of 75% of the Condominium Units that may be created in the Project to Owners other than Declarant, two (2) years after the last conveyance of a Condominium Unit by Declarant in the ordinary course of business, or two (2) years after any right to add new Units was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of 25% of the Condominium Units that may be created in the Project to Owners other than Declarant, at least one member and not less than 25% of the members of the Executive Board will be elected by Owners other than Declarant. Not later than sixty (60) days after the conveyance of 50% of the Condominium Units that may be created in the Project to Owners other than Declarant, not less than 33-1/3% of the members of the Executive Board will be elected by Owners other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect an Executive Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Executive Board shall elect the officers, with such Board members and officers to take office upon termination of the period of Declarant's control. Within sixty (60) days after Owners other than Declarant elect a majority of the Executive Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Common Interest Act.

## ARTICLE 6 THE ASSOCIATION

6.1 **Management and Maintenance Duties.** Subject to the rights of Owners as set forth in this Declaration and giving full effect to the powers enumerated in Section 302 of the Common Interest Act, the Association shall:

- (a) Be responsible for the management, control, maintenance, repair, replacement and improvement of the Common Elements and any property owned by the Association, including facilities, furnishings and equipment related thereto, and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner shall be responsible for exclusive maintenance, repair and replacement of all fixtures, equipment and utilities



installed or located within such Owner's Unit, and all other equipment providing exclusive service thereto or therefor and any service lines from such equipment to the Condominium Unit, including without limitation all utility, heating, plumbing, air conditioning and domestic hot water equipment and appurtenances, but only to the extent such fixtures, equipment and utilities are owned by said Owner.

(b) Maintain all grass, trees, shrubbery, flowers and other landscaping, if any, constituting part of the Common Elements.

The expenses, costs and fees of such management, operation, maintenance, repair, replacement and improvement by the Association, as provided in this Section 6.1, shall be part of the monthly assessments for Common Expenses levied by the Association; provided that the Association may levy the costs and expenses associated with any of the following as an Individual Purpose Assessment (as defined in Section 7.8 below) against the Owner(s) of the Unit(s) involved: expenses for maintaining, repairing, replacing or improving any Limited Common Element allocated to that individual Condominium Unit, expenses of maintaining, repairing and replacing all fixtures, equipment and utilities which are Common Elements but provide exclusive service to such Owner's Unit and any service lines from such equipment to the Unit, including without limitation all utility, heating, plumbing, domestic hot water equipment and appurtenances. In addition, as more fully provided in Article 7 below, the Association must reasonably allocate the costs and expenses of maintaining, repairing, replacing or improving all Limited Common Elements allocated to Owners of Condominium Units in connection with assessments for Common Expenses. Except for the Owners' right to reject a budget as described in Section 7.3, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

## **6.2 Owner's Negligence; Prohibition of Certain Activities.**

(a) Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or replacement of the Common Elements, or any portion thereof, is caused through or by the negligent or willful act or omission of an Owner, an Owner's tenant or by any member of an Owner's or tenant's family or by an Owner's or tenant's guests, invitees or licensees or concessionaires, or as a result of any improvement constructed by an Owner in or upon the Limited Common Elements, then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be the personal obligation of such Owner; and, if not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total amount of such expenses, costs and fees, or any portions thereof, from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Condominium Unit.

(b) Nothing shall be done or kept in any Condominium Unit or in or on the Common Elements, or any part thereof, which would be in violation of any

statute, rule, ordinance, regulation, permit or other imposed requirement of any governmental body having jurisdiction over the same. No damage to, or waste of, the Common Elements, or any part thereof, shall be committed by any Owner or Owner's tenant, or by any member of an Owner's or tenant's family, or by a guest, invitee, licensee or concessionaire or contract purchaser of any Owner or Owner's tenant. Each Owner shall indemnify and hold the Association and the other Owners harmless from and against all loss and damage resulting from any action or activity committed by him, his tenant or the members of his or his tenant's family, his or his tenant's guests, invitees, licensees or contract purchasers, which is in violation of this Section 6.2(b), including but not limited to any improvements constructed by an Owner in or upon the Limited Common Elements. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by it is proper), then the amounts to be indemnified shall be and constitute a default assessment determined and levied against the Owner's Condominium Unit.

**6.3 Management Agreements and Other Contracts.** The Association may delegate management of its business affairs. Any management contract, employment contract or lease of recreational or parking areas or facilities, any other contract or lease between the Association and Declarant, or an affiliate of Declarant or any contract or lease that was unconscionable to the Owners at the time entered into under the then prevailing circumstances may be terminated without penalty by the Association at any time following expiration of Declarant's control of the Executive Board, upon not less than ninety (90) days' notice to the other party.

**6.4 Acquiring and Disposing of Real and Personal Property.** The Association may acquire, own and hold for the use and benefit of all Owners, tangible and intangible personal property and real property for such uses and purposes as the Executive Board of the Association may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in all of the Common Elements. Such beneficial interest of an Owner shall not be transferable except with the transfer of that Owner's Condominium Unit. Transfer of a Condominium Unit, including transfer pursuant to foreclosure, shall transfer to the transferee ownership of the transferor's beneficial interest in such personal and/or real property without any reference thereto. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Executive Board of the Association in its sole discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

**6.5 Promulgation of Rules and Regulations.** The Executive Board of the Association may promulgate and enforce, including, without limitation, enforcement by

levying and collecting charges or fines for the violation thereof, reasonable rules and regulations governing the use of the Condominium Units, Common Elements and any property owned by the Association, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

**6.6 New Additions to Common Elements.** The Association shall have the right to construct new additions to the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Condominium Units in proportion to the respective undivided interest in all of the Common Elements as shown on Exhibit "B" attached hereto, and shall be governed by this Declaration. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Condominium Units as provided in Article 7 hereof.

**6.7 Conveyance or Encumbrance of Common Elements.** The Association may convey or grant a security interest in portions of the Common Elements only in accordance with the provisions of Section 312 of the Common Interest Act and subsection 16.1(a)(iii) of this Declaration.

## **ARTICLE 7 ASSESSMENTS**

**7.1 Personal Obligation for Assessments, Taxes, Utilities, and Other Matters.** All Owners covenant and agree, and shall be personally obligated, to pay to the Association: (a) monthly assessments for Common Expenses imposed by the Association to meet the Common Expense and reserve requirements of the Association; (b) Special Assessments, pursuant to Section 7.6 of this Declaration; (c) Individual Purpose Assessments, pursuant to Section 7.7 of this Declaration; and (d) other charges, costs, interest, fees and assessments, including without limitation default assessments, as provided in this Declaration. All assessments for each Condominium Unit shall be calculated by multiplying the total annual amount of the assessment due, pursuant to Section 7.2 and Section 7.6 (as the case may be), times the percentage undivided interest in the Common Elements appurtenant to such Condominium Unit as shown on Exhibit "B" attached hereto. All Owners of each Condominium Unit shall be jointly and severally liable to the Association for the payment of all assessments, charges, costs, interest and fees attributable to their Unit. The payment of any and all assessments is an independent covenant, with all assessments payable in full, when due, without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges and fees provided for herein by nonuse of the Common Elements or the facilities contained therein or by abandonment or leasing of his Unit. In addition to the foregoing assessments, charges and fees, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental

subdivisions against his Condominium Unit, as well as all charges for separately metered utilities servicing his Condominium Unit. The charges for utilities which are not separately metered to an individual Condominium Unit by the applicable utility company may be collected by the Association as part of the Common Expenses; however, the charges for such utilities shall be allocated among the Condominium Units based on actual usage, if such is measured, or in accordance with Section 7.2 hereof if the same is not measured.

## **7.2 Assessments for Common Expenses; Budgets.**

(a) The initial monthly installment of the maximum annual common expense assessment for each Condominium Unit shall be as set forth on Exhibit "B" attached hereto. The initial maximum annual common expense assessment for each Condominium Unit shall be the amount of the aforesaid monthly installment multiplied by the number of months remaining in the year at the time the initial common expense assessment is made by the Association.

(b) Commencing with the second assessment year and thereafter, the maximum annual common expense assessment shall be based upon the Association's advance budget of all cash requirements to be determined by the Executive Board from time-to-time (but no less frequently than annually) based on a budget adopted from time-to-time by the Association (but no less frequently than annually). The Executive Board of the Association shall prepare each proposed budget assuming the Association's books and records are maintained on an accrual basis, to provide for the payment of all estimated expenses, costs and fees for the duties described in Section 6.1 of this Declaration and for other costs, fees and expenses, related to or connected with the administration, maintenance, ownership, repair, operation, addition, alteration and improvement of the Project, the Common Elements, real or personal property owned by the Association, and any other obligations which may be undertaken by the Association. The amount of said advance budget may include, but shall not be limited to: expenses of management; premiums for insurance; landscaping and care of the common grounds; common lighting and heating; maintenance, repair, replacement and renovation of the Common Elements; wages; taxes; legal and accounting fees; management fees; costs, expenses and liabilities incurred by the Association's Executive Board on behalf of the Owners or otherwise arising under or by reason of this Declaration, the Articles of Incorporation or Bylaws of the Association; the creation of reasonable reserves, working capital and/or sinking funds; reimbursement for or payment of any operating deficit, loss, or unbudgeted expense incurred by the Association; and any and all other costs and expenses relating to the Common Elements, real or personal property owned by the Association, and/or any other obligations undertaken by the Association. The maximum annual common expense assessment against each Condominium Unit shall be calculated by multiplying the total amount of the aforesaid Association budget times the percentage undivided interest in the Common Elements

appurtenant to such Condominium Unit, provided, however, that the maximum annual common expense assessment against each Condominium Unit shall not be increased more than fifteen per cent (15%) over the amount of such assessment for the immediately preceding assessment year.

(c) Within thirty (30) days after adoption of any proposed budget, the Executive Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

(d) The Association may at any time and from time to time, during any annual common expense assessment period, levy an actual common expense assessment in an amount less than the maximum for that assessment period; provided, however, that written notice of any change in the amount of the actual common expense assessment (whether in an amount less than or equal to the maximum) shall be sent to every Owner subject thereto at least thirty (30) days in advance of the effective date of such change.

**7.3 Reserves.** The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced, and for payment of insurance deductibles. Such reserves shall be included in the budget and funded through the monthly assessments for Common Expenses.

**7.4 Date of Payment of Monthly Common Expense Assessments.** The monthly assessments for Common Expenses shall be due and payable on the first day of each month, in advance, or on such other dates, and with such frequency (but no less frequently than annually), as may be set by the Executive Board of the Association from time to time. Any person purchasing a Unit between monthly assessment due dates shall pay a pro rata share of the last assessment due. The initial annual common expense assessment shall commence on the date of conveyance by Declarant of the first Condominium Unit, and the second and each subsequent annual assessment for Common Expenses shall correspond to the fiscal year of the Association.

**7.5 Rate of Assessment.** Both monthly assessments for Common Expenses and any Special Assessments shall be fixed at such rates as will be sufficient to meet the advance budget of the Association, as provided in Sections 7.2 and 7.6 hereof.

**7.6 Special Assessments.** In addition to the monthly assessments for Common Expenses authorized above, the Executive Board of the Association may at any time,

from time to time, determine, levy and assess a special assessment for the purpose of defraying, in whole or in part, payments for any operating deficit, loss or unbudgeted expense, and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement, management, administration, or maintenance of the Common Elements, including without limitation any fixtures and personal property related thereto; provided, however, that the Executive Board shall first obtain the consent of two-thirds (2/3) of the Owners' votes who are voting in person or by proxy at a meeting duly called for that purpose. Each such Special Assessment shall be set against each Condominium Unit in accordance with the principles set forth in Section 7.1 hereof. Such Special Assessment(s) shall be due and payable as determined by the Association's Executive Board. Prior to the conveyance by Declarant of the last Condominium Unit to the first Owner thereof (other than Declarant), or prior to ten years following the date this Declaration is recorded in the real property records of Arapahoe County, Colorado, whichever occurs first, any Special Assessment for Capital Improvements shall require also the written approval of Declarant and any Agencies which have insured or purchased a First Mortgage if such approval is requested by the Agencies. "Capital Improvements" as used herein shall mean the construction, erection or installation of substantial structure(s) or other substantial improvements on the Real Estate, but shall not include the construction, reconstruction, erection, installation, maintenance, repair or replacement of Common Elements presently located in the Project or which may hereafter be constructed, erected or installed in the Project by Declarant in its development of the Project. Notice in writing setting forth the amount of such Special Assessment for each Condominium Unit and the due date for payment thereof shall be given to the Owners not less than thirty (30) days prior to such due date.

#### **7.7 Individual Purpose Assessments.**

(a) In addition to assessments for Common Expenses and Special Assessments as hereinabove provided, the Executive Board of the Association may at any time, or from time to time, levy and collect assessments against any one or more, but fewer than all, of the Condominium Units for any matters of maintenance or repair, replacement or improvement applicable only to such Condominium Units and not to all the Condominium Units. Such Individual Purpose Assessments may be levied against individual Condominium Units to pay in advance or reimburse the Association for any costs, expenses, fees, and other charges, incurred or reasonably anticipated to be incurred by the Association, for maintenance, repair, replacement and improvement, provision of insurance, or any other purpose, with respect to the Condominium Unit(s) against which such Individual Purpose Assessment is levied which are not applicable to all the Condominium Units.

(b) The amounts determined, levied and assessed pursuant to this Section 7.7 shall be due and payable as determined by the Executive Board of the Association, provided that written notice setting forth the amount of such individual purpose assessment for each Condominium Unit and the due date(s) for

payment thereof shall be given to the Owners of the affected Condominium Units not less than thirty (30) days prior to the due date.

#### **7.8 Lien for Assessments.**

(a) Under the Common Interest Act, the Association has a statutory lien on a Condominium Unit for any assessments levied against that Condominium Unit and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration or the Common Interest Act are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) The statutory lien for assessments is prior to all other liens and encumbrances on a Condominium Unit except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgage which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Condominium Unit. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the assessments based on a periodic budget adopted by the Association pursuant to Section 7.2 which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action to enforce the statutory lien, but not including attorney's fees and costs being incurred in an action to enforce the statutory lien.

(c) The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Owner and his Condominium Unit as a default assessment.

**7.9 Effect of Non-Payment of Assessments.** Any assessments, charges, costs or fees provided for in this Declaration, including, without limitation, any default assessment arising under any provision of this Declaration, which are not fully paid within ten (10) days after the due date thereof, will bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such other rate as may be set by the Association from time to time (subject to any limits imposed by law), and the Association may also assess a monthly late charge thereon. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue assessments, charges, costs or fees, and may also proceed to foreclose its lien against such Owner's Unit in the manner of a mortgage upon such property. An action at

law or in equity by the Association against an Owner to recover a money judgment for unpaid assessments, charges, costs or fees, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. In the event that any such assessment, charge, cost or fee, is not fully paid when due and the Association shall commence such an action (or shall counterclaim or cross claim for such relief in any action) against an Owner personally obligated to pay the same, or shall proceed to foreclose its lien against the particular Unit, then all unpaid assessments, charges and fees, any and all late charges and accrued interest under this Section 7.9, the Association's costs, expenses and reasonable attorneys' fees incurred in collection efforts, and the Association's costs of suit, expenses and reasonable attorneys' and other professional fees incurred for any such action and/or foreclosure proceedings, and any other costs which may be authorized by a court of competent jurisdiction, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. 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 assessments, charges, costs or fees, 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. In any action brought by the Association (or counterclaim or cross claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The Court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

**7.10 Successor's Liability for Assessments.** Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Condominium Unit shall not affect the lien for assessments, charges, costs or fees levied hereunder, except that sale or transfer of a Condominium Unit pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association assessments, but not the personal obligation of the Owner for the payment of assessments, which became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, or any proceeding in lieu thereof except to the extent the lien of the Association has priority over the First Mortgage under Section 7.8; provided, however, that any such assessments, charges, costs or fees which are extinguished as provided herein may be reallocated and assessed to all Units as a Common Expense. A First Mortgagee may be personally liable for any unpaid assessments, charges, costs or fees, or portion thereof, accruing against a Unit prior to the time such First Mortgagee takes title to such Unit, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 7.8. No such sale,



transfer, foreclosure or any proceeding in lieu thereof, shall relieve any Owner from liability for any assessments, charges, costs or fees, or any portion thereof, thereafter becoming due, nor such Owner's Unit from the lien for such subsequent assessments, charges, costs and fees.

**7.11 Homestead Waiver.** The Association's lien on a Condominium Unit for assessments, charges, costs and fees, provided for herein, shall be superior to any homestead exemption which is now or may hereafter be provided by state or federal law. The acceptance of a deed to a Condominium Unit shall constitute a waiver of the homestead exemption against all such assessments, charges, costs and fees.

**7.12 Working Capital Fund.** The Association or Declarant shall require the first Owner of each Unit (other than Declarant) to make at the time of purchase a non-refundable contribution to the Association in an amount equal to two (2) times the monthly assessment for Common Expenses against that Unit in effect at the closing thereof. At the time Declarant's control of the Association terminates, Declarant shall transfer control of the working capital fund to the Association (if not transferred earlier) and in addition will pay the Association an amount equal to two times the monthly assessment for Common Expenses against all Units then owned by Declarant (unless such payment has previously been made with respect to any such Units). Amounts paid into the working capital fund should not be considered as advance payments of regular assessments. Funds in the working capital account shall be segregated with other such working capital funds for the use and benefit of the Association including without limitation to meet unforeseen expenditures or to purchase additional equipment, property or services for Common Expenses. Such contribution to working capital funds shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Unit, an Owner (including Declarant if Declarant has previously paid working capital funds for the sold Unit) shall be entitled to a credit from his transferee (but not from the Association) for the unused portion of the contribution to the working capital fund. Declarant shall not use any of the working capital funds to defray its expenses, reserve contributions, or construction costs or to make up any budget deficits.

**7.13 First Mortgagees May Pay Assessments and Cure Defaults.** If any assessment on a Condominium Unit is not paid by the Owner thereof within thirty (30) days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles of Incorporation or Bylaws of the Association is not cured within thirty (30) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such assessment, together with any other amounts secured by the Association's lien created by this Article 7, and may (but shall not be required to) cure any such default.

**7.14 Statement Regarding Assessments.** The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request, delivered personally or by certified mail, first class postage

prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of any unpaid assessments currently levied against such Owner's Condominium Unit. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Condominium Unit for unpaid assessments which were due as of the date of the request.

7.15 **Liens.** In accordance with the requirements of the Common Interest Act, as amended, Declarant hereby states that it is possible that liens other than mechanics, liens, assessment liens or tax liens may be obtained against the Common Elements, including without limitation judgment liens and construction or purchase money mortgage liens.

## **ARTICLE 8 INSURANCE**

8.1 **Insurance on Common Elements.** Commencing not later than the time of the first conveyance of a Condominium Unit to a person other than Declarant, the Association shall maintain the following types of insurance for the benefit of the Owners to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as a common expense. Notwithstanding any of the specific insurance requirements contained in this Article 8, the Association must also consider and comply with, in determining the types and amounts of insurance it needs to obtain, the then-existing applicable requirements of the Agencies with respect to their insurance, guaranty, or purchase of First Mortgages.

(a) A policy of property insurance covering all insurable improvements located within the Project (including the Units, but not including furniture, wall trimmings, improvements, equipment, fixtures, additional or other personal property supplied or installed by Owners) except for land, foundation, excavation and other matters normally excluded from coverage, in an amount not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date. Further, said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, and include an "Inflation Guard Endorsement" (if obtainable), an "Agreed Amount Endorsement," a "Construction Code Endorsement" applicable), and if the Project has central heating or air conditioning, a "Steam Boiler and Machinery Coverage Endorsement" with minimum coverage per accident equal to the lesser of \$2,000,000 or the insurable value of the Building. The Association will also purchase endorsements and/or coverage on personal property owned by

the Association, including fixtures and building service equipment, furnishings, common personal property and supplies. Such insurance shall afford protection against at least the following:

(i) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering the Project insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Project (including but not limited to Common Elements), legal liability arising out of lawsuits related to employment contracts of the Association and protection against liability for non-owned and hired automobiles; such coverage may also include, if applicable, comprehensive automobile liability insurance, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association and such other risks as may customarily be required by private institutional mortgage investors with respect to condominium projects similar in construction, location and use.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle or are responsible for handling funds of the Association, in an amount at least equal to two months current assessments plus reserves. Such fidelity coverage or bonds shall meet the following in the aggregate requirements:

(i) all such fidelity coverage or bonds shall name the Association as an obligee;

(ii) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association must require the managing agent to purchase at its own expense, a policy of fidelity insurance or bonds which fully comply

with the provisions of this subparagraph (c), unless the Association names such agent as an insured employee under a policy of fidelity insurance or fidelity bonds in accordance with subparagraph (c) above.

(d) A policy providing personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

(e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available.

**8.2 General Provisions of Insurance Policies.** All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee as trustee and attorney-in-fact for all Owners and First Mortgagees, and each Owner shall be an insured person under such policies with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association. The policy or policies shall recognize any applicable Insurance Trust Agreement and shall contain a standard non-contributory First Mortgagee's clause in favor of and specifically naming each First Mortgagee (including any Agency or the servicers of First Mortgagees and their successors and assigns) and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each First Mortgagee, insurer or guarantor of a First Mortgage under the Declaration. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including First Mortgagees under the Declaration, upon request. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner or the Association. The policies shall also contain a waiver by the insurer of any right to claim by way of subrogation against the Owners, Declarant, the Association, and their respective officers, directors and members and any of such parties' respective families, agents, employees or tenants. The liability insurance policy provided for under Section 8.1(b) shall insure the Executive Board, the Association, any management agent and their respective employees, agents and all persons acting as agents. Declarant shall be included as an additional insured in its capacity as an Owner and member of the Executive Board. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Such liability insurance shall cover claims of one or more insured parties against the other insured parties.

**8.3 Deductibles.** No policy of insurance of which the Association or its designee is the beneficiary shall include a deductible clause in an amount which is greater than the lesser of \$10,000.00 or 1% of the face amount of the policy. Any loss falling within the deductible portion of such policy shall be a Common Expense shared by the

Owners in accordance with the applicable provisions of Article VII of this Declaration. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner, and assess such loss as a default assessment against such negligent Owner and his Unit, subject to all provisions of this Declaration applicable to such assessments.

**8.4 Insurance Trustee.** The Executive Board shall have authority to authorize an insurance trustee to assist and consult on matters concerning the insurance required under this Declaration; to negotiate and compromise settlement of losses under any insurance; and to collect the proceeds from any insurance, hold such proceeds in trust for the Owners and their First Mortgagees as their interest may appear and dispose of such proceeds as provided in Article 8 of this Declaration and the Common Interest Act.

**8.5 Association Insurance as Primary Coverage.** If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of such Owner; provided that if such amount(s) are not repaid to the Association within ten (10) days after the Association shall have given notice to the Owner of the total of such amount(s), from time to time, then the failure to so repay shall automatically become a default assessment determined and levied against such Unit and Owner.

**8.6 Acceptable Insurance Companies.** Any hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which has a current rating by Best's Insurance Reports (or a comparable rating by any successor or generally accepted substitute for Best's) of B/VI or better, or a financial rating of Class V provided it has a general policy holder's rating of at least A, and is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

**8.7 Insurance to be Maintained by Owners.** Insurance coverage on furnishings, including carpet, draperies, kitchen and other appliances, wallpaper and other items of personal property belonging to an Owner of a Condominium Unit, and public liability coverage within each Condominium Unit, shall be the sole and direct responsibility of the respective Owner(s) thereof, and the Association, its Executive Board and/or the managing agent of the Association shall have no responsibility therefor;

provided, however, that the Executive Board of the Association may elect to include any such coverage in any Association policy and any costs of such coverage not allocable to the Owners on a uniform basis shall be assessed as an Individual Purpose Assessment.

**8.8 Annual Review of Insurance Policies.** All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association. Prior to obtaining any policy of fire insurance or renewal thereof, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or other person knowledgeable as to replacement costs, which appraiser shall reasonably estimate the full replacement value of the improvements to the insured for the purpose of determining the amount of insurance required pursuant to the provisions of this Article. Any First Mortgagee shall be furnished with a copy of such appraisal upon request.

**8.9 Notice of Cancellation.** If any insurance required in this Article 8 to be obtained by the Association is not reasonably available or is cancelled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by U.S. Mail to all Owners.

## **ARTICLE 9 CONVEYANCE AND TAXATION OF CONDOMINIUM UNITS**

**9.1 Contracts Entered into Prior to Recording of Condominium Map and Declaration.** A contract or other agreement for the sale of a Condominium Unit entered into prior to the filing for record of the Condominium Map and/or this Declaration in the office of the Clerk and Recorder of the County of Arapahoe, Colorado, may legally describe such Condominium Unit in the manner set forth in Section 9.2 hereof and may indicate that the Condominium Map and/or this Declaration are to be recorded. Upon recordation of the Condominium Map and this Declaration in the County of Arapahoe, Colorado, such description shall be conclusively presumed to describe the corresponding Condominium Unit shown on the Condominium Map and such Condominium Unit shall be subject in all respects to this Declaration.

**9.2 Contracts Entered into Subsequent to Recording of Condominium Map and Declaration.** Subsequent to the recording of the Condominium Map and this Declaration, every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit may legally describe that Condominium Unit as follows:

Condominium Unit \_\_\_\_\_, Stone Canyon Condominiums,  
according to the Condominium Map thereof, recorded on  
\_\_\_\_\_, 199\_, at Reception No. \_\_\_\_\_ in  
the records of the office of the Clerk and Recorder of the County of  
Arapahoe, Colorado, and as defined and described in the

Condominium Declaration for Stone Canyon Condominiums,  
recorded on \_\_\_\_\_, 199\_, at Reception  
No. \_\_\_\_\_, in said records.

9.3 **Legal Effect of Description.** Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Condominium Unit which legally describes said Condominium Unit substantially in the manner set forth in Section 9.2 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect the Condominium Unit, including its undivided interest in all Common Elements and all other appurtenant properties and property rights, and incorporate all of the rights, limitations and burdens incident to, ownership of a Condominium Unit as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Condominium Unit and the use of all the General Common Elements as well as all of the Limited Common Elements allocated to said Condominium Unit, all as more fully provided in this Declaration.

9.4 **Taxation.** Each Condominium Unit shall be assessed separately for all taxes, assessments and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority, in accordance with the Common Interest Act. For the purpose of such assessments, the valuation of the General Common Elements shall be apportioned among the Condominium Units in proportion to the undivided interest in all of the Common Elements appurtenant thereto and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned among the individual Condominium Units to which such Limited Common Elements are allocated. The Association shall furnish to the Tax Assessor of the County of Arapahoe, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

## ARTICLE 10 MECHANIC'S LIENS

10.1 **Mechanic's Liens.** No labor performed and/or materials furnished for use and incorporated in any Condominium 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 except as to the undivided interest therein allocated to the Unit of the Owner for whom such labor shall have been performed or such materials furnished. 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 for materials furnished in work on the first Owner's Condominium Unit.

**10.2 Enforcement by the Association.** At its own initiative or upon the written request of any Owner, if the Association determines that further action by it is proper and the mechanic's lien(s) are not disputed claims with a reasonable basis for such dispute, the Association, after notice and hearing, shall enforce the indemnity provided by Section 10.1 hereof by collecting from the Owner of the Condominium Unit on which the labor was performed and/or materials furnished, the amount necessary to discharge any such mechanic's lien, including all costs and reasonable attorney's fees incidental thereto, and obtain a discharge of such lien. In the event that the Owner of the Condominium Unit on which the labor was performed and/or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount, or any portions thereof, from time to time, to be indemnified, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 10.2 and such amount to be indemnified shall automatically become a default assessment determined and levied against such Condominium Unit.

**10.3 Effect of Partial Payment.** In the event a lien attributable to labor performed and/or materials furnished on the Project, or any portion thereof, is effected against two or more Condominium Units, the Owner(s) of any of the affected Condominium Units may pay to the lienholder the amount of the lien attributable to such Owner's Condominium Unit and the lienholder shall release such Condominium Unit from the lien. The amount required to be paid by any such Owner in order to obtain release of his Condominium Unit from any such lien shall be equal to the quotient of (i) the amount of the lien, divided by (ii) the total number of Condominium Units affected by the lien. Partial payment and release of any such lien with respect to any Condominium Unit(s) shall not prevent the lienholder from enforcing his rights against any Condominium Unit for which payment has not been received.

## **ARTICLE 11 EASEMENTS**

**11.1 Recorded Easements.** In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements as shown on any recorded plat of the Real Estate, or any portion thereof, and as shown on the recorded Condominium Map. Further, the Real Estate, or portions thereof, is now or may hereafter be subject to the easements, licenses, and other recorded documents, or any of them, set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

**11.2 Encroachments.** In the event that any portion of the Common Elements encroaches upon any Unit(s) or in the event that any portion of a Unit encroaches upon any other Unit(s) or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of the Building, or



(ii) alteration or repair to the Common Elements, or (iii) repair or restoration of the Building and/or Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one or more of the Units, Building or other improvements comprising part of the Common Elements are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment is hereby created and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other security instruments relating to Units, 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 as indicated on the Condominium Map.

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

**11.4 Utilities.** There is hereby created a blanket easement upon, across and through the Common Elements for the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. If any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon the earlier of seven (7) years after recordation of this Declaration in the County of Arapahoe, Colorado, or conveyance by Declarant of the last Condominium Unit to the first Owner thereof (other than Declarant), at which time said reserved right shall vest in the Association. The easement provided for in this Section 11.4 shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

**11.5 Maintenance Easement.** An easement is hereby granted to the Association, its officers, directors, agents, employees and assigns upon, across, over, in and under the Common Elements, and a right to make such use of the Common Elements

as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements maintenance and storage facilities for use by the Association.

**11.6 Drainage Easement.** An easement is hereby granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Real Estate for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Real Estate to improve the drainage of water on the Real Estate.

**11.7 Easements of Access for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within a Unit(s) (including garages) or may be conveniently accessible only through a Unit(s) (including garages). The Owners of other Unit(s) and the Association shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements or any utility lines or pipes which are not Common Elements, located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Subject to the provisions of Section 6.2 hereof, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any Unit at the instance of the Association shall be an expense of the Owners apportioned in accordance with Section 7.2. Damage to the interior part of any Unit resulting from the installation, movement, repair, emergency repair, removal or replacement of any utility lines or pipes not servicing more than one Condominium Unit shall be the expense of the Owner whose unit such utility lines and pipes serve and such expense may be reimbursed through an Individual Purpose Assessment. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies the occupants of the affected Unit shall be warned of impending entry as early as is reasonably possible.

**11.8 Construction Utility Easement.** Each Owner shall have an easement in, upon, under and across the Common Elements for the construction and installation of any duct work, additional plumbing or other additional services or utilities in the Common Elements in connection with the improvement or alteration of any Condominium Unit.

**11.9 Declarant's Rights Incident to Completion of the Project.** Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Elements and the right to store materials thereon and to make such other uses thereof as may be reasonably necessary or

incidental for the purpose of the completion or improvement of the Project, the performance of Declarant's obligations hereunder, the sale of the Units and the exercise of Declarant's special rights under Section 12.3 and Article 17 hereof; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, his family members, guests or invitees, to or of his Condominium Unit or the Common Elements. The rights of Declarant under this section shall terminate upon conveyance by Declarant of the last Condominium Unit to an Owner other than Declarant or seven (7) years after the recording of this Declaration, whichever occurs first.

11.10 **Easements Deemed Created.** All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 11, even though no specific reference to such easements or to this Article 11 appears in the instrument for such conveyance.

## **ARTICLE 12 RESTRICTIVE COVENANTS**

12.1 **Residential Use.** Subject to Section 12.4 hereof, Condominium Units shall be used for residential purposes only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that the Owner may use his Condominium Unit for a professional or home occupation, so long as the applicable governmental rules, regulations and ordinances permit such use and there is no external evidence thereof.

12.2 **Declarant's Use.** Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Project such facilities as Declarant deems reasonably necessary or incidental to the completion and sale of Condominium Units, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, signs, model units, sales offices, parking areas and lighting facilities. The rights retained by Declarant in this Section 12.2 shall terminate upon conveyance by Declarant of the last Condominium Unit to an Owner other than Declarant or seven (7) years after the recording of this Declaration, whichever occurs first.

12.3 **Household Pets.** No animals, livestock, poultry, or insects, of any kind, shall be raised, bred, kept, or boarded in or on the Properties; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats, fish, or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number as to create a nuisance to any resident(s) of the Properties. Notwithstanding the foregoing, the Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats, or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to any

resident(s) of the Properties, or that an Owner is otherwise in violation of the provisions of this Section 12.3, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s).

**12.4 Use of Common Elements.** Subject to the rights of Declarant as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the General Common Elements without the prior written approval of the Association. Except for those improvements erected or installed by Declarant in its completion of the Project, and except as provided in Section 12.2 and Article 17 hereof, nothing shall be altered on, constructed in or removed from the Common Elements without the prior written approval of the Executive Board of the Association. Such approval may be conditioned upon the Owner who requests the approval to submit plans for the alteration to the Association for approval, obtaining insurance as required by the Association and posting adequate surety. In reviewing any plans, the Association may engage the services of architects, attorneys and engineers, and the cost of such services will be paid by the requesting party.

**12.5 Exterior Changes.** Except for those improvements erected, constructed or installed by Declarant in its completion of the Project, no exterior additions to, alterations or decoration of the Building, including but not limited to any structural alterations to any Condominium Unit or Common Element, nor any changes in fences, walls or other structures, nor installation of window mounted air conditioning units or awnings or any exterior improvement of any type shall be commenced, erected, placed or maintained, without the prior written approval of the Executive Board of the Association and subject to all laws, ordinances, regulations, or other restrictions limiting or precluding alteration of the exterior of the Building.

**12.6 Signs and Advertising.** Except as hereinafter provided, no signs, advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on any Condominium Unit, nor shall any sign(s) be permitted in or on the Common Elements, without the prior written approval of the Association; provided, however, that no approval is necessary for any sign which is part of the interior Common Elements, and provided further that reasonable signs, advertising, or billboards used by Declarant in connection with its sale of Condominium Units shall be permissible.

**12.7 Leases.** The term "lease" as used herein shall include any agreement for the leasing or rental of a Condominium Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

- (a) All leases shall be in writing and a copy of the lease delivered to the Executive Board of the Association or the Association's managing agent prior to the effective date of the lease.

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease.

(c) No lease shall be for less than thirty (30) days.

12.8 **Nuisances.** No nuisance shall be allowed on the Project, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Project by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the completion of the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of the Project or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project, or any portion thereof, shall be observed.

### **ARTICLE 13**

#### **DAMAGE, DESTRUCTION, TERMINATION, OBSOLESCENCE OR CONDEMNATION**

13.1 **Association as Attorney-in-Fact.** This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Project in the event of its destruction, damage, obsolescence or condemnation, including the repair, replacement and improvement of the Building, any Condominium Units, Common Elements or other portions of the Project which have been destroyed, damaged, condemned or become obsolete. Title to any Condominium Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney in their name, place and stead, for the purpose of dealing with the Project upon its damage, destruction, obsolescence or condemnation, as is hereinafter provided. As attorney-in-fact, the Association by its President and Secretary or Assistant Secretary, or its other duly authorized officers and agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instruments with respect to the interest of an Owner which are necessary and appropriate to exercise the powers herein granted. In the event that the Association is dissolved or becomes defunct, a meeting of the Owners shall be held within thirty (30) days after either such event. At such meeting a new attorney-in-fact, to deal with the Project upon its destruction, damage, obsolescence or condemnation shall be appointed. Such appointment must be approved by the Owners holding at least sixty-seven percent (67%) of the votes in the Association and at least sixty-seven percent (67%) of the First

Mortgagees (based upon one vote for each First Mortgage held or two votes for any First Mortgage held on an approved combined Unit).

### 13.2 Termination of Condominium.

(a) The Condominium Project shall continue indefinitely unless and until it is terminated by the taking of all of the Condominium Units by eminent domain or by agreement of the Owners holding at least sixty-seven percent (67%) of the votes in the Association and First Mortgagees holding sixty-seven percent (67%) of the First Mortgages (based on one vote for each First Mortgage held or two votes for any First Mortgage held on an approved combined Unit). The agreement of the Owners and First Mortgagees to terminate must be evidenced by their execution of a Termination Agreement (or a ratification thereof) in the same manner as a deed, by the requisite number of Owners and First Mortgagees. The Termination Agreement must specify a date after which the Agreement will be void unless it is recorded before that date. The Termination Agreement and all ratifications thereof must be recorded with the Clerk and Recorder of the County of Arapahoe and is effective only upon recordation. After the recording of the Termination Agreement, the Project will be sold and the Association, on behalf of the Owners, may contract for such sale, but the contract shall not be binding on the Owners unless approved by the same vote of Owners and First Mortgagees required for approval of the Termination Agreement. After approval of the sale, the Association shall have all power necessary and appropriate to effect the sale and until the sale has concluded and the proceeds have been distributed, the Association continues in existence with all the powers it had before termination. Proceeds of the sale must be distributed to the Owners and lienholders as their interest may appear, in accordance the provisions set forth below. Unless otherwise specified in the Termination Agreement, until title to the Project has been transferred pursuant to a sale, each Owner and its successors in interest have an exclusive right to occupancy of a portion of the real estate that formally constituted the Unit. During the period of that occupancy, each Owner and the owner's successors in interest remain liable for all assessments and other obligations imposed upon the Owners by the Common Interest Act or this Declaration. Following termination of the Condominium Project, the proceeds of any sale of real estate, together with any insurance proceeds (if the termination occurs in connection with a damage or destruction) and the assets of the Association are held by the Association as trustee for the Owners and the holders of liens on the Condominium Units as their interest may appear.

(b) The respective interest of the Owners is as follows:

(i) except as provided in subparagraph (ii) below, the respective interests of the Owners are the fair market values of their Units and interest in the General Common Elements and any Limited Common Elements allocated to such Units before termination, as determined by one or more

independent appraisers selected by the Association. The decision of the independent appraisers shall be distributed to the Owners and becomes final unless disapproved within thirty (30) days after distribution by Owners holding at least twenty-five percent (25%) of the total votes in the Association. The proportion of any Owner's interest to that of all Owners is determined by dividing the fair market value of that Owner's Condominium Unit by the total fair market value of all Condominium Units;

(ii) if any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Owners are their respective interests in all of the Common Elements for each Condominium Unit immediately before termination.

(c) The proceeds available for distribution to the holders of interests in the Condominium Units after a termination shall be allocated to each Condominium Unit in accordance with its proportionate interest as provided above and each Condominium Unit's share of such proceeds shall be deposited into a separate account identified by the Condominium Unit designation and the name of the Owner and First Mortgagee thereof. From each separate account, the Association, as attorney-in-fact, shall forthwith use and disburse the total amount of such account, without contribution from one account to another, toward payment of the liens encumbering the Condominium Unit represented by such separate account, in the following order: (a) for the payment of taxes and special assessment liens in favor of any assessing entity; (b) for the payment of any Association Common Expense assessments which take priority over the lien of a First Mortgage pursuant to Section 7.8 of this Declaration and the Common Interest Act; (c) for the payment of the lien of any First Mortgage; (d) for the payment of unpaid Association Common Expense assessments, other assessments, charges and fees, and all costs, expenses and fees incurred by the Association, including customary expenses of sale; (e) for payment of junior liens and encumbrances in the order of and to the extent of their priority; and (f) the balance remaining, if any, shall be paid to the Owner(s) of the Condominium Unit.

13.3 **Damage or Destruction.** "Repair and reconstruction" of the improvements, as used in the succeeding subparagraphs, means restoring the improvement(s) to substantially the same condition in which they existed prior to their damage or destruction, with each Condominium Unit and the General and Limited Common Elements having substantially the same vertical and horizontal boundaries as before, and all improvements being reconstructed or repaired in substantial conformance with the Project's original architectural plan and scheme, to the extent then reasonably and economically feasible. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, reconstruction, restoration or replacement, in accordance with the provisions hereinafter set forth:

(a) Any loss covered by the property insurance policy maintained by the Association must be adjusted with the Association, and the insurance proceeds will be paid to the Association or an insurance trustee designated for such purpose and not to the holder of any Security Interest. The insurance trustee or the Association shall hold such insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of subparagraph (b) below, the proceeds must be disbursed first to the repair or restoration of the damaged property, and the Association, Owners and lienholders shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated in accordance with Section 13.2. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, and such other matters of claims adjustment. The Association shall have full authority, right and power as attorney-in-fact to cause the repair and reconstruction of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

(b) Any portion of the Project for which insurance is required under this Declaration must be repaired or replaced promptly by the Association unless (i) the Condominium Project is terminated in accordance with Section 13.2, in which case the provisions of that Section apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (iii) the owners who hold eighty percent (80%) of the votes in the Association vote not to rebuild and every Owner of a Unit or Limited Common Element allocated to a Unit that will not be rebuilt concurs; or (iv) prior to the conveyance of any Condominium Unit to a person other than Declarant, the holder of a deed of trust or mortgage on the damaged portion of the Project rightfully demands all or a substantial portion of the insurance proceeds.

(c) If the insurance proceeds are insufficient to repair and reconstruct the improvements, such damage or destruction shall be promptly repaired and reconstructed by the Association as attorney-in-fact, using the proceeds of insurance and the proceeds of a special assessment. Such special assessment shall be assessed against all Condominium Units in accordance with Section 7.6 hereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair, replacement or restoration of the improvements, using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the aforesaid special assessment. Notwithstanding the foregoing, the Association shall have authority to assess negligent Unit Owners causing any loss all deductibles paid by the Association and any amount by which the insurance proceeds are insufficient to pay the costs of repair and reconstruction.

13.4 **Obsolescence.** Owners holding sixty-seven percent (67%) of the votes in the Association may agree that the Common Elements are obsolete and adopt a plan for



the renewal and reconstruction thereof. If a plan for renewal or reconstruction is adopted, notice of such plan shall be recorded with the Clerk and Recorder for the County of Arapahoe, Colorado, and the expenses of renewal and reconstruction shall be payable by all of the Owners as a Common Expense, whether or not they have previously consented to the plan of renewal and reconstruction. The aforesaid Common Expense assessment for the renewal and reconstruction of the Common Elements shall be a debt of each Owner and a lien on his Condominium Unit, and may be enforced and collected as provided in Sections 7.8 and 7.9 hereof.

**13.5 Condemnation.** If at any time during the continuance of condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority, or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Section 13.5 shall apply:

(a) All compensation, damages or other proceeds therefrom (the "Condemnation Award") shall be payable to the Association.

(b) In the event that the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant to this Declaration shall terminate. The Condemnation Award shall be apportioned among the Owners by the Executive Board of the Association the same as if there had been a termination of the Project under Section 13.2; provided, however, that if a standard different from the value of the Project as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable. The Association shall, as soon as practicable, determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

(c) Subject to the provisions of Article 16 hereof, in the event that less than the entire Project is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award, to be determined in the following manner: as soon as practicable, the Association shall reasonably, and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners, as follows: (i) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among the Owners in accordance with the undivided interest in all of the Common Elements for each Condominium Unit; (ii) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned; (iii) the respective amounts allocated to the taking of or damage to a particular Condominium Unit, including but not limited to the Limited Common Elements

allocated thereto, and to the improvements an Owner has made within his Condominium Unit, shall be apportioned to the particular Condominium Unit involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances, or as determined by judicial decree.

Notwithstanding anything to the contrary contained in this Declaration, the allocation of the Condemnation Award to each affected Condominium Unit shall be based on the comparative values of the affected Condominium Units as they existed immediately prior to the condemnation, using such evidence of the appraised values as is then available, including, but not limited to, recent MAI appraisals of the affected property or comparable property. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Apportioned proceeds shall be disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

(d) In the event a partial taking results in the taking of a complete Condominium Unit, the Owner(s) thereof shall automatically cease to be a Member(s), shall cease to hold any right, title or interest in the remaining Common Elements, and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate all of the Allocated Interests according to the principles employed in this Declaration at its inception, and shall submit such reallocation to the Owners and to the First Mortgagees of all remaining Condominium Units for amendment of this Declaration. The Condemnation Award as to each such completely taken Condominium Unit shall be paid into a separate account and disbursed, as soon as practicable, in the same manner as provided in Section 13.2 hereof.

(e) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Section 13.3 hereof.

(f) If a Unit is acquired by eminent-domain or part of a Unit is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award will include compensation to the Owner for that Unit and its undivided interest in all of the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, all of that Unit's Allocated Interests (other than voting rights) will be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking. Any remnant of a Unit remaining after a part of a Unit is taken pursuant to this subsection (f) will thereafter be a Common Element.

(g) Except as provided in subsection (f) above, if part of a Unit is acquired by eminent domain, the award must compensate the Owner for the

reduction in value of the Unit and its undivided interest in all of the Common Elements, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, the Unit's undivided interest in the Common Elements shall be reduced and determined by dividing the square footage of the remainder of the Unit by the total square footage of all Units in the Project after the taking, but the Unit's vote and share of assessments for Common Expenses shall remain the same.

(h) The reallocation of Allocated Interests pursuant to this Section shall be confirmed by an Amendment to this Declaration prepared, executed and recorded by the Association.

#### **ARTICLE 14 BURDENS AND BENEFITS OF DECLARATION**

14.1 **Covenants Running with Real Estate.** The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Real Estate.

14.2 **Binding Effect.** The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure to the benefit of, Declarant, the Association and all Owners, together with their respective heirs, executors, administrators, personal representatives, successors and assigns. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association or other entity, in accordance with the provisions of the Common Interest Act.

#### **ARTICLE 15 AMENDMENT OF DECLARATION**

15.1 **Amendment.** Except for Amendments that may be executed by Declarant or by the Association under the provisions of this Declaration or the Common Interest Act, the provisions of this Declaration and/or the Condominium Map may be amended, in whole or in part, at any time and from time to time, by vote or agreement of Owners holding at least sixty-seven percent (67%) of the votes in the Association. Every Amendment to the Declaration and/or the Condominium Map must be recorded in the office of the Clerk and Recorder of the County of Arapahoe, Colorado and is effective only upon recording. Except to the extent expressly permitted by the Common Interest Act and provided for in this Declaration, no Amendment may create or increase any special Declarant's rights, increase the number of Units in the Project, or change the boundaries of any Unit or the Allocated Interests of a Unit, or alter the uses to which any Unit is restricted, in the absence of unanimous consent of the Owners. Amendments to the Declaration required by this Article to be recorded by the Association shall be

prepared, executed, recorded and 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.

**15.2 Technical Amendment.** To the extent allowed by the Common Interest Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, technical amendments to this Declaration, the Condominium Map, Articles of Incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant) or seven (7) years from the date this Declaration is recorded in the County of Arapahoe, Colorado, whichever occurs first, for the purposes of correcting spelling, grammar, dates, typographical errors, or as may otherwise be necessary to clarify the meaning of any provisions of this Declaration.

**15.3 Special Amendment.** To the extent allowed by the Common Interest Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles of Incorporation and/or Bylaws of the Association, at any time prior to the conveyance of the last Condominium Unit by Declarant to the first Owner thereof (other than Declarant) or seven (7) years from the date this Declaration is recorded in the County of Arapahoe, Colorado, whichever occurs first, in order to comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

**15.4 Recording of Amendments.** To be effective, all amendments to or revocation or termination of this Declaration or the Condominium Map must be recorded in the office of the Clerk and Recorder of the County of Arapahoe, Colorado, and must contain evidence of the required approval thereof. The recordation of a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Condominium Units, and the requisite percentage of First Mortgagees, if required, have given notarized written consent to the amendment shall satisfy the requirement of evidence of the required approval. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, along with the recorded amendment, are in the corporate records of the Association and available for inspection.

## **ARTICLE 16**

### **MEMBER AND FIRST MORTGAGEE APPROVAL**

**16.1 Member and First Mortgagee Approval.** Subject to Sections 2.4, 15.2 and 15.3 hereof and the rights of Declarant provided for herein (including but not limited to the Development and Additional Special Declarant Rights contained in Article 17), but

notwithstanding any other provisions of this Declaration to the contrary, the Association shall not:

(a) Unless it has obtained the prior written consent of Members holding at least sixty-seven percent (67%) of the votes in the Association (unless a higher percentage is required by applicable law) and sixty-seven percent (67%) of the First Mortgagees (based on one vote for each First Mortgage held, or two votes for each First Mortgage held on an approved combined Unit):

(i) Seek to abandon or terminate the Project, whether by act or omission, except:

(A) For abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or

(B) In the case of a taking by condemnation or eminent domain, in which event the provisions of Section 13.5 of this Declaration shall control; or

(C) For amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Real Estate or improvements thereon;

(ii) Except as permitted by Section 2.4 with respect to Declarant, Section 13.5 and Article 17, change the pro rata interest or obligations of any individual Condominium Unit for the purpose of:

(A) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(B) Determining the pro rata share of ownership of each Condominium Unit in the Common Elements;

(iii) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting of permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project);

(iv) Use hazard insurance proceeds for losses to any condominium property (whether to Condominium Units or Common Elements) other than in accordance with the procedures set forth in Sections 13.2 and 13.3 hereof.

(b) Unless it has obtained the prior written consent of at least sixty-seven percent (67%) of the total allocated votes in the Association, and fifty-one percent (51%) of the First Mortgagees (based upon one vote for each First Mortgage held or two votes for each First Mortgage held on an approved combined Unit) , add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only:

- (i) Voting rights;
- (ii) Assessments, assessment liens or the priority of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Elements;
- (iv) Responsibility for maintenance and repair of any portion of the Project;
- (v) Reallocation of undivided interests in the Common Elements, or rights to use of the Common Elements, except as contemplated under Section 2.4 with respect to Declarant, and Section 13.5 and Article 17 hereof;
- (vi) Redefinition of boundaries of any condominium Unit except as contemplated under Section 2.4 with respect to Declarant and Article 17 hereof;
- (vii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (viii) Insurance, including, but not limited to, fidelity bonds;
- (ix) Leasing of Condominium Units except as contemplated under Article 17 hereof;
- (x) Imposition of any restriction on the right of any owner to sell or transfer his Condominium Unit;
- (xi) Any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any First Mortgagee or any insurer or guarantor of a First Mortgage;

(xii) Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association;

(xiii) Any action to terminate the legal status of the Project after substantial destruction or condemnation; or

(xiv) Any provisions which are for the express benefit of First Mortgages, or insurers or guarantors of First Mortgages.

- 16.2 **Notice of Action.** Upon written request therefor to the Association, stating both its name and address and the Unit number or address on which it holds (or insures or guarantees) a First Mortgage, a First Mortgagee, insurer or guarantor of a First Mortgage, shall be entitled to timely written notice of:

(a) Any condemnation loss or casualty loss which affects a material portion of the Project or any Condominium Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a First Mortgage;

(b) Any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Condominium Unit subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association if the Executive Board of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of First Mortgagees as provided in this Article 16.

16.3 **Notice of Objection.** Unless a First Mortgagee or an insurer or guarantor of a First Mortgagee entitled to consent to certain amendments or actions as provided in this Article provides the Secretary of the Association with written notice of its objection, if any, to the proposed amendment or action within thirty (30) days after its receipt of notice of the proposal, the First Mortgagee or other party will be deemed conclusively to have approved of the proposed amendment or action.

16.4 **Financial Statements; Audit.** The Association shall maintain copies of this Declaration, the Condominium Map, the Articles of the Incorporation of the Association, the Bylaws of the Association, and any rules and regulations relating to the Project, together with all amendments to any such documents, as well as the

Association's books, records and financial statements available for inspection by the Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Condominium Units. The documents will be made available by advance arrangement at a reasonable time. The Association shall not be required to prepare audited statements; however, if there is no audited statement available, any First Mortgagee will be allowed to have an audited statement prepared at its own expense.

## ARTICLE 17

### DEVELOPMENT AND ADDITIONAL SPECIAL DECLARANT RIGHTS

17.1 **Additional Declarant Rights.** In addition to the provisions of this Article 17, Declarant shall have and be entitled to exercise all other development or special declarant rights specifically reserved to Declarant elsewhere in this Declaration, in accordance with the provisions establishing such rights.

17.2 **Development Rights.** Declarant intends to construct on the Real Estate the Units in phases. Until seven (7) years following the date of recording of this Declaration, without consent of the individual Owners, Declarant expressly reserves to itself, and its successors and assigns, the right to add and annex additional Units, Common Property and Common Area on the Real Property. Declarant shall have the right to add and annex up to three hundred \_\_\_\_\_ (3\_\_ ) Units, and no assurances are made in regard to the order or number of such Units which may be added. Each such annexation shall be effected, if at all, by recording an amendment to this Declaration, and an amendment to the Condominium Map in the office of the Clerk and Recorder of the County of Arapahoe, Colorado, which amendment shall assign an identifying number to each new Unit; and shall reallocate the allocated interests among all Condominium Units pursuant to the formula provided in Section 7.1 above; and shall describe any Common Property thereby created. All provisions of this Declaration, including but not limited to those provisions regarding obligations to pay assessments to the Association and any right to cast votes as members of the Association, shall apply to annexed Units immediately upon recording an annexation document with respect thereto, as aforesaid. All improvements to be added shall be substantially completed before such property is added to the Declaration.

17.3 **Amendment of this Declaration.** Upon Declarant's exercise of any of its Development Rights and/or other special declarant rights set forth in this Article 17, Declarant shall record an amendment to this Declaration (including but not limited to Exhibit B hereof) and/or the Condominium Map reflecting the changes in this Declaration and/or the Map occasioned by the exercise of such Development Rights and/or other special declarant rights and reallocating the Allocated Interests as required thereby. No consent will be required from the Association, the Executive Board, or any other person for Declarant to exercise such rights and any amendment to this Declaration required to implement the same may be executed solely by Declarant.



**17.4 Amendment of Condominium Map.** Contemporaneously with the Amendment of this Declaration, Declarant shall file an Amendment of the Condominium Map reflecting all changes resulting from exercise of the Development Rights or other special declarant rights and which changes are required or desirable to be shown on the Condominium Map. No consent will be required from the Association, the Executive Board, or any other person for Declarant to exercise such rights and any amendment to the Condominium Map that is required to implement the same may be executed solely by Declarant.

**17.5 Interpretation.** Recording of amendments to this Declaration and the Condominium Map in the office of the Clerk and Recorder for the County of Arapahoe, Colorado, shall automatically give effect to those matters contained in such amendments and, among other things, shall immediately vest in the existing and future Owners and holders of Security Interests an undivided interest in any of the Common Elements subsequently created.

**17.6 Maximum Number of Units.** The maximum number of Condominium Units created or to be created in the Project shall not exceed four hundred (400) Condominium Units. Declarant shall not be obligated to expand the number of Condominium Units beyond those initially created by this Declaration and the Condominium Map.

**17.7 Construction Easements.** Declarant expressly reserves the right to perform repairs and construction work and to store materials in secure areas in the General Common Elements, together with the future right to control such repairs and construction and the right of access thereto, until completion, or to permit the exercise of its Development Rights and/or other special declarant rights without the consent or approval of any other Owner. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere within the General Common Elements.

**17.8 Termination of Development Rights and Special Declarant Rights.** The Development Rights and other special declarant rights reserved by Declarant for itself, its successors and assigns, pursuant to this Article 17, shall expire seven (7) years from the date of recording this Declaration, unless the Development Rights or other special declarant rights are (a) extended if allowed by law, or (b) reinstated or extended by the Association, subject to whatever terms, conditions, limitations the Executive Board may impose on the subsequent exercise of the Development Rights and other special declarant rights of Declarant.

**17.9 Transfer of Development Rights and Other Special Declarant Rights.** Any Development Rights and other special declarant rights created or reserved under this Article 17 for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the office of the Clerk and Recorder for

the County of Arapahoe, Colorado. Such instrument shall be executed by Declarant and its transferee.

## ARTICLE 18 MISCELLANEOUS

**18.1 Period of Condominium Ownership.** The condominium ownership created by this Declaration and the Condominium Map shall continue until this Declaration is terminated in any manner provided in this Declaration or by law.

**18.2 Supplement to Condominium Ownership Act.** The provisions of this Declaration shall be in addition and supplemental to the Common Interest Act, as it may be amended from time to time, and to any other applicable provisions of law.

**18.3 Conveyance of Condominium Units.** All Condominium Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way and all other terms and provisions contained in this Declaration, as it may be amended from time to time.

**18.4 Enforcement.** Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, shall be by any proceeding at law or in equity against any person or persons (including but not limited to the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and or prosecute any such proceedings, and the Association shall further have the right to levy and collect charges for the violation of any provision of any of the aforesaid documents, which charges shall be a perpetual lien in favor of the Association against each Condominium Unit, as more fully provided in Article 7 hereof; in any such action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Notwithstanding the Association's right to use summary abatement or similar means to enforce the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as amended, the Association must initiate appropriate judicial proceedings before any items of construction of a permanent nature previously made by or on behalf of an Owner can be altered or demolished.

**18.5 Notices; Registration of Mailing Address.** Each Owner and each First Mortgagee, insurer or guarantor of a First Mortgage, shall register a mailing address with the Association, and notices or demands intended to be served upon the Association, any such Owner, First Mortgagee, insurer or guarantor shall be delivered by messenger or sent by first class mail, postage prepaid, addressed to the Association at its

address set forth below (or such other address of which it gives notice) or to such other person or entity addressed in the name of such person or entity, at such registered address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Condominium Unit. Until the same has been changed, the address for the Association shall be: 1531 Stout Street, Suite 100, Denver, Colorado 80202.

**18.6 Non-Waiver.** Failure by Declarant, the Association, any Owner, First Mortgagee or any other person or entity to enforce any covenant, condition, restriction, easement, reservation, right-of-way or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

**18.7 Severability.** The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions hereof, or any portion thereof, by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which other provisions shall remain in full force and effect.

**18.8 Number and Gender.** Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

**18.9 Captions.** The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted herein only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision hereof.

**18.10 Conflicts in Documents.** In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and Bylaws of the Association, the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set its hand and seal this 25 day of August, 2000.

BCORP STONE CANYON LLC, AS NOMINEE, a  
Colorado limited liability company

By: BCORP MANAGEMENT, INC.  
Manager

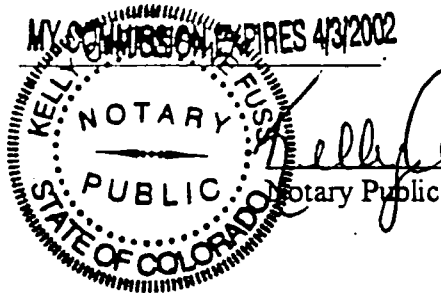
By: Kelly Beech  
Kelly Beech, (Vice) President

STATE OF Colorado )  
 ) ss.  
CITY AND COUNTY OF Denver

The foregoing instrument was acknowledged before me this 25 day of August, 2000, by Kelly Berg, as (Vice) President of BCORP Management, Inc., Manager of BCORP STONE CANYON LLC, AS NOMINEE, a Colorado limited liability company.

Witness my hand and official seal.


My commission expires: MY COMMISSION EXPIRES 4/3/2002



Consent of Lienholder:

The undersigned holder of a deed of trust on the property described on Exhibit A hereof executes this Declaration for the purpose of consenting to the dedications, easements and covenants contained herein.

INTERAMERICAN INVESTMENTS, INC.,  
a Barbados corporation


By:   
Title: GLORIA LEE  
ASST. DIRECTOR OF MORTGAGE

PRINCIPLE OF B.C.  
'STATE OF \_\_\_\_\_ )  
) ss.  
'CITY AND COUNTY OF \_\_\_\_\_ )'

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of AUGUST,  
2000, by GLORIA LEE, as ASSISTANT DIRECTOR OF MORTGAGE of Interamerican Investments,  
Inc., a Barbados corporation.

Witness my hand and official seal.

My commission expires: N/A

  
Notary Public for B.C.

SHAEL E. SMITH  
Barrister & Solicitor  
1450 - 1075 W. Georgia St.  
Vancouver, B.C. Canada V6E 3C9  
Tel: 632-0701 Fax: 682-7359

EXHIBIT "A"

LOT 1, BLOCK 1 AND LOT 1, BLOCK 2 HUTCHINSON HEIGHTS SUBDIVISION FILING NO. 17 LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 66 WEST OF THE 6<sup>TH</sup> PRINCIPLE MERIDIAN, CITY OF AURORA, COUNTY OF ARAPAHOE, STATE OF COLORADO RECORDED, AT RECEPTION NO. 3052632 IN THE PUBLIC RECORDS OF ARAPAHOE COUNTY, ALONG WITH PART OF SOUTH YAMPA STREET AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1, BLOCK 2 HUTCHINSON HEIGHTS SUBDIVISION FILING NO. 17; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 1 BLOCK 2 THE FOLLOWING TWO (2) COURSES:

1. N 89 DEGREES 47'02" W, A DISTANCE OF 179.53 FEET;
2. N65 DEGREES 09'38" W, A DISTANCE OF 483.76 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH YAMPA STREET;

THENCE N65 DEGREES 09'38" W, A DISTANCE OF 30.00 FEET TO A POINT ON THE CENTERLINE OF SAID SOUTH YAMPA STREET;

THENCE S 24 DEGREES 50'22" W, ALONG SAID CENTERLINE, A DISTANCE OF 270.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF EAST GIRARD AVENUE;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES:

1. N 65 DEGREES 09'38"W, A DISTANCE OF 119.70 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;
2. ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 746.15 FEET AND A CENTRAL ANGLE OF 12 DEGREES 44'53" A DISTANCE OF 166.02 FEET
3. N 77 DEGREES 54'31" W, A DISTANCE OF 203.07 FEET TO THE BEGINNING OF THE CURVE TO THE RIGHT;

THENCE ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 15.00 FEET AND A CENTER ANGLE OF 89 DEGREES 00'59" A DISTANCE OF 23.3 FEET TO A POINT OF COMPOUND CURVE ON THE EASTERLY RIGHT-OF-WAY LINE OF SOUTH WACO STREET;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE ALONG THE ARC OF THE CURVE TO THE LEFT WITH A RADIUS OF 2606.14 FEET A CENTRAL ANGLE OF 14 DEGREES 32'36" A DISTANCE OF 661.51 FEET TO A POINT OF COMPOUND CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 89 DEGREES 33'49" A DISTANCE OF 31.26 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF EAST DARTMOUTH AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING FIVE (5) COURSES:

1. N 86 DEGREES 07'41" A DISTANCE OF 25.08 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

LEGAL DESCRIPTION (CONTIN)

2. ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 668.31 FEET AND A CENTRAL ANGLE OF 28 DEGREES 42'41" A DISTANCE OF 334.90 FEET;
3. S 65 DEGREES 09'38" E, A DISTANCE OF 45.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;
4. ALONG THE ARC OF SAID CURVE WITH THE RADIUS OF 859.75 FEET AND A CENTRAL ANGLE OF 24 DEGREES 37'24" , A DISTANCE OF 369.48 FEET
5. S 89 DEGREES 47'02" E, A DISTANCE OF 45.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE ALONG THE ARC OF SAID CURVE WITH A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90 DEGREES 00'00" A DISTANCE OF 39.27 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF TOWER ROAD;

THENCE ALONG SAID WESTERLY RIGHT-OF -WAY LINE, A DISTANCE OF 467.31 FEET TO THE POINT OF BEGINNING.

CONTIANING 16.06 ACRES MORE OR LESS.



**Exhibit "B"**

**Unit Square Footages, Allocated Interest, Initial Maximum Monthly Assessment**

Unit Address	Square Feet	Allocated Interest	Initial Maximum Monthly Assessment
3242 A S. Zeno Ct.	1,083	8.632%	\$105
3242 B S. Zeno Ct.	1,041	8.297%	\$101
3242 C S. Zeno Ct.	992	7.907%	\$96
3242 D S. Zeno Ct.	976	7.779%	\$94
3242 E S. Zeno Ct.	976	7.779%	\$94
3242 F S. Zeno Ct.	1,205	9.605%	\$117
3242 G S. Zeno Ct.	1,205	9.605%	\$117
3242 H S. Zeno Ct.	976	7.779%	\$94
3242 I S. Zeno Ct.	976	7.779%	\$94
3242 J S. Zeno Ct.	992	7.907%	\$96
3242 K S. Zeno Ct.	1,041	8.297%	\$101
3242 L S. Zeno Ct.	1,083	8.632%	\$105
Totals	12,546	100.000%	

EXHIBIT "C"

EASEMENTS, LICENSES AND OTHER RECORDED DOCUMENTS

RESERVATION IN FAVOR OF THE FEDERAL LAND BANK OF WICHITA CONTAINED IN DEED TO ROSE BECKER AND HENRY BECKER, DATED DECEMBER 28, 1938 AND RECORDED JANUARY 6, 1939, IN BOOK 412 AT PAGE 80, PROVIDING AS FOLLOWS:

EXCEPTING AND RESERVING TO FIRST PARTY, ITS SUCCESSORS AND ASSIGNS, AN UNDIVIDED 1/2 OF ALL OIL, GAS AND OTHER MINERALS AND MINERAL RIGHTS, IN, UPON AND UNDER SAID REAL ESTATE, TOGETHER WITH THE FULL AND FREE RIGHT TO ENTER UPON SAID PREMISES AND USE SO MUCH OF THE SURFACE THEREOF AS MAY BE REASONABLY NECESSARY FOR OPERATING, DRILLING AND MARKETING PRODUCTION THEREOF, AND FOR THE PURPOSES OF THIS RESERVATION.

TERMS, CONDITIONS AND PROVISIONS CONTAINED IN AGREEMENT DATED NOVEMBER 15, 1971 BETWEEN THE CITY OF AURORA, COLORADO AND 24, INC. RECORDED JANUARY 14, 1972 IN BOOK 1987 AT PAGE 307, ADDENDUM RECORDED RECORDED JANUARY 17, 1978 IN BOOK 2712 AT PAGE 729, AND LETTER REGARDING OBLIGATIONS REMAINING UNDER SAID AGREEMENT RECORDED JANUARY 27, 1992 IN BOOK 6359 AT PAGE 150.

THE EFFECT OF GENERAL DEVELOPMENT PLAN - HUTCHINSON HEIGHTS AMENDMENT RECORDED JULY 20, 1978 UNDER RECEPTION NO. 1870810, PLANNED COMMUNITY ZONE DISTRICT RECORDED JUNE 13, 1983 AS RECEPTION NO. 2287993 AND AMENDMENT THERETO RECORDED AUGUST 13, 1984 AS RECEPTION NO. 2440961 AND PUD MAP RECORDED OCTOBER 15, 1991 UNDER RECEPTION NO. 0086121.

EASEMENTS, CONDITIONS, RESTRICTIONS, AND RESERVATIONS ON THE RECORDED PLAT OF HUCHINSON HEIGHTS SUBDIVISION FILING NO. 17, AND HUTCHINSON HEIGHTS SUBDIVISION NORTH 28.

AN EASEMENT GRANTED TO CITY OF AURORA FOR SIDEWALK PURPOSES BY INSTRUMENT RECORDED JULY 3, 1996 UNDER RECEPTION NO. A6084699.

AN EASEMENT GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO FOR UTILITY LINES BY INSTRUMENT RECORDED SEPTEMBER 30, 1996 UNDER RECEPTION NO. A6125967.

## EXHIBIT C

AN EASEMENT GRANTED TO THE CITY OF AURORA FOR WATER, SEWER AND STORM DRAINAGE LINES BY INSTRUMENT RECORDED JANUARY 14, 1997 UNDER RECEPTION NO. A7005111.

UTILITY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED JUNE 22, 1998, UNDER RECEPTION NO. A8094520.

THE EFFECT OF HUTCHINSON HEIGHTS SUBDIVISION SUBDIVISION FILING NO. 17 SITE PLAN RECORDED NOVEMBER 2, 1999 UNDER RECEPTION NO. A9176225.

THE EFFECT OF ORDINANCE NO. 99-27 VACATING PORTION OF SOUTH YAMPA STREET RECORDED JUNE 30, 1999 UNDER RECEPTION NO. A9107526.

TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT FOR GRANT OF EASEMENT RECORDED February 17, 2000 AT RECEPTION NO. B0019058.

TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT FOR GRANT OF EASEMENT RECORDED February 17, 2000 AT RECEPTION NO. B0019064.

UTILITY EASEMENT AS GRANTED TO PUBLIC SERVICE COMPANY OF COLORADO IN INSTRUMENT RECORDED April 12, 2000, UNDER RECEPTION NO. B0043180.