

Return Upon Recordation To:

Garfield & Hecht, P.C.
Attn: David McConaughy
420 Seventh St. #100
Glenwood Springs, CO 81601

CONDOMINIUM DECLARATION

FOR

GLENWOOD COMMERCIAL CENTER CONDOMINIUMS

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This Condominium Declaration for Glenwood Commercial Center Condominiums (the "Declaration") is made this 9 day of March, 2016 (the "Effective Date") by RAD Development-Glenwood, LLC, a Colorado limited liability company, hereinafter referred to as "Declarant."

Recitals

A. Declarant is the owner of the real property located in Garfield County, State of Colorado identified on attached Exhibit A (the "Property"). The purpose of this Declaration is to create a condominium project ("Project") by submitting the Property to the condominium form of ownership and use pursuant to the Colorado Common Interest Ownership Act, Article 33.3, Title 38, Colorado Revised Statutes, as amended and supplemented from time to time ("Act")

B. The Property is improved with four (4) buildings which contain a total of 46 commercial units (each a "Unit") and 46 parking units (each a "Parking Unit"). The Property is further improved with parking spaces and driveways. The functions, activities, physical appearance and other features commonly associated with commercial uses hereby are and shall be expressly permitted in the Project, as more particularly described, provided for and governed herein.

C. The Units are designated on the Map. The Common Elements and Limited Common Elements are also designated on the Map.

D. In accordance with Section 118 of the Colorado Common Interest Ownership Act, the Declarant hereby submits the Property and the Project to the provisions of the Act. In the event that the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable.

E. By this Declaration and the Map, a plan is hereby established for the separate fee simple ownership of the Units by the Owners as depicted in the Map.

NOW, THEREFORE, the Association does hereby publish and declare that the following terms, covenants, conditions, easements, restrictions, uses, reservations, limitations, and obligations shall be deemed to run with the land comprising the Property and the Project, and shall be a burden and a benefit to the Owners, their lenders, grantees, successors, heirs, executors, administrators, devisees, and assigns.

1. **Statements of Purpose and Declaration.**

1.1 **Purpose.** The purpose of this Declaration is to recognize and update the creation of a planned community of condominiums known as Glenwood Commercial Center Condominiums, all in accordance with the Act, as amended and supplemented from time to time.

1.2 **Intention of Owners.** The Owners intend to protect the value and desirability of the Project, continue the existing plan of condominium ownership within the Project, and encourage a harmonious and attractive condominium community that will promote and safeguard the health, comfort, safety, convenience and welfare of the Owners.

1.3 **Number of Units.** The Project currently consists of four (4) buildings which have a total of 46 commercial Units and 46 Parking Units. It is the intention of this Declaration to accommodate future Unit combination requests as long as the required procedures under the Act and under the Association's governing documents, as well as any zoning and building procedures enforced by the City of Glenwood Springs, are strictly followed by the parties in interest. In addition, Units may be combined only in accordance with the provisions of this Declaration. Units shall be inseparable except as otherwise provided in this Declaration and permitted by law.

1.4 **Imposition of Covenants.** To accomplish the purposes indicated above, the Association hereby declares that from the date of recording of this Declaration forward, the Project will constitute a common interest ownership community under the Act, as amended and supplemented from time to time, and shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements (collectively, the "Covenants") contained in this Declaration. The Covenants shall run with the land and be binding upon all persons having any right, title or interest in all or any part of the Project and their heirs, successors and assigns, tenants, employees, guests, and invitees. The Covenants will inure to the benefit of all present and future Owners. All Owners are subject to all the rights and duties assigned to Owners under these Covenants. The acquisition or rental of any of the Units, or the mere act of occupancy of any of the Units, will signify acceptance, ratification and an agreement to comply with this Declaration.

2. **Definitions.** The following words when used in this Declaration or any Amended Declaration shall have the following meanings:

2.1 "**Act**" means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et seq., as amended and supplemented from time to time, or any successor legislation to these statutes.

2.2 "**Allocated Interests**" means the undivided interest allocated to each Unit for the purpose of determining the Assessments for each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 The percentage of the total common expenses or total common element space is a ratio based upon the approximate net interior square footage of a Unit compared to the approximate total net interior square footage of all Units. All such measurements are based upon the dimensions recited in the Map.

2.2.2 With respect to voting on any matter, there will be one vote per commercial Unit notwithstanding the relative size of any Unit. No votes are allocated to Parking Units.

2.3 "**Articles**" means the Articles of Incorporation for the Association currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.4 "**Annual Assessment**" means the Assessment levied pursuant to an annual budget and allocable to Owners based on the Allocated Interests set forth on Exhibit B attached hereto. The Annual Assessment may be invoiced and collected on a quarterly or other basis as determined by the Board of Directors.

2.5 "**Assessments**" means the Annual, Special and Default Assessments levied pursuant to Article 14 hereof. Assessments shall also constitute a Common Expense Liability as defined under the Act.

2.6 "**Association**" means Glenwood Commercial Center Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns, and any successor association formed to govern and manage the Project. The members of which Association shall be all of the Owners of the Units.

2.7 "**Association Documents**" means this Declaration, the Articles of Incorporation and the Bylaws of the Association, the Map and any procedures, rules, regulations and policies adopted under such documents by the Association that govern the Association.

2.8 "**Board**" means the Board of Directors of the Association, which is the executive board, as defined in the Act, designated in this Declaration to act on behalf of the Association as the governing body of the Association.

2.9 "**Bylaws**" means the Bylaws adopted by the Association, as amended from time to time.

2.10 "**Clerk and Recorder**" means the office of the Clerk and Recorder in the County of Garfield, Colorado.

2.11 "**Project**" means the common interest community consisting of the portions of the buildings in which the Units, Common Elements and Limited Common Elements created by this Declaration and the Map exist and as shown on the Map.

2.12 "**Common Elements**" means all portions of the Project excluding the Units, but including, without limiting the generality of the foregoing, the following components, which include General Common Elements and Limited Common Elements: roof, stairs, parking spaces, driveways, walkways, building exteriors, landscaping, detention ponds and stormwater facilities.

2.13 "**Common Expenses**" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, insuring, operating, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements and Limited Common Elements; (iii) insurance premiums for the insurance carried under this Declaration; (iv) expenses agreed upon as Common Expenses by the members of the Association; (v) expenses provided to be paid pursuant to any management agreement; (vi) expenses provided to be paid pursuant to this Declaration; and (vii) all expenses lawfully determined to be common expenses by the Board, from time to time in accordance herewith.

2.14 "**Condominium**" means a Unit, as defined in the Act, together with the undivided interest in the Common Elements and all easements, rights, licenses and appurtenances allocated or made appurtenant to the Unit pursuant to this Declaration.

2.15 "**County**" means the County of Garfield, State of Colorado.

2.16 "**Declaration**" means this Condominium Declaration and amendments and supplements to the foregoing, if any, recorded in the office of the Clerk and Recorder of the County in accordance with the Act.

2.17 "**Default Assessment**" means the Assessments levied by the Association pursuant to Section 14.7 below.

2.18 "**Director**" means a member of the Board.

2.19 "**First Mortgage**" means any Mortgage that is not subject to any prior lien or encumbrance except liens for taxes or other liens that are given priority by Colorado statute.

2.20 "**First Mortgagee**" means any person or entity named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person or entity under such First Mortgage.

2.21 "**General Common Elements**" means the Common Elements to the Project, except for the Limited Common Elements to the Project, as depicted on the Map and/or described in the Declaration. The General Common Elements shall include, but are not limited to, the exterior walls and siding, stairways and stairwells, except that any of the foregoing that are located within a Unit shall not be a General Common Element. All of the land and easements which comprise the Project; all vehicular entrances and exits, and catwalks. All subflooring, plumbing elements, drywall, sheetrock, interior surfaces or other components within a Unit or forming the interior boundaries of a Unit shall be considered Limited Common Elements or a portion of the applicable Unit rather than General Common Elements. The roofs on the Buildings shall be Common Element.

2.22 "**Limited Common Elements**" means those parts of the Common Elements to the Project which are limited to or reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include

any Parking Space or exterior yard as marked as a Limited Common Element on the Map.

2.23 "**Managing Agent**" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Board may authorize from time to time. Such person may be a member of the Board.

2.24 "**Map**" means the Condominium Map of the Project referred to in the Recitals and recorded with the County Clerk and Recorder. The Map depicts a plan and elevation schedule of all or a part of the Project with dimensions and requirements in accordance with the Act, which Map is subject to this Declaration and amendments hereto.

2.25 "**Member**" means every person or entity that holds membership in the Association.

2.26 "**Mortgage**" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

2.27 "**Mortgagee**" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

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

2.29 "**Parking Space**" means any of the spaces designated on the Map for the parking of motor vehicles or such other use or uses approved by the Board from time to time. Each Parking Space is shown on the Map, as herein defined. Certain Parking Spaces are marked on the Map as Limited Common Elements which are reserved for exclusive use by the Unit number(s) designated. There will be at least one Parking Space identified as a Limited Common Element for each of the 46 Units. There are 46 Parking Spaces identified as Parking Units. The remaining 98 Parking Spaces are Common Elements.

2.30 "**Parking Unit**" means a condominiumized Parking Space designated for parking as shown and described on the Map. There are 46 Parking Units. Parking Units may be owned and sold only by Owners of commercial Unit(s), including Declarant. Until and unless Parking Units initially owned by the Declarant are sold to other Owners, the Association and Owners shall have a non-exclusive license for the use of such Declarant-owned Parking Units. Subject to the rights of owners of Parking Units to restrict the right to park there by others, all Parking Units shall be managed, maintained and insured by the Association in the same manner as Parking Spaces that are part of the Common Elements. Declarant shall have the right to notify the Association that it has reserved one or more Parking Units for itself in connection with its ownership of a commercial Unit, in which case such Parking Unit shall no longer be deemed "unsold." In the event that an Owner sells all of its Units but retains title to a Parking Unit for more than 30 days after recording of a deed divesting all of its interest in such commercial Units, then the Declarant shall have a right to enter and retake possession and title to such Parking Unit. Parking Unit owner(s) may not encumber, in any way, their parking unit (mortgage, lease, etc.) and parking

units may not be leased, subleased or sold unless in connection with a sale of the unit or as a condition of a lease should owner not also be the tenant of said unit.

2.31 "**Person**" (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, an association, a trust, or any other entity or combination thereof.

2.32 "**Property**" means the real property more particularly described in Exhibit A which contains the Units and Common Element owned by all of the Owners as tenants in common in accordance with their percentage ownership interest in the General Common Elements. The Property is comprised of the land upon which the Project is situated.

2.33 "**Special Assessment**" means an Assessment levied pursuant to Section 14.5 below on an irregular basis.

2.34 "**Unit**" means a condominiumized individual airspace designated for commercial use which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings as shown and described on the Map together with the appurtenant interest in the Common Elements.

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

3. **Name, Division into Units.**

3.1 **Name.** The name of the Project is Glenwood Commercial Center Condominiums. The Project is a Condominium pursuant to the Act.

3.2 **Association.** The name of the Association is Glenwood Commercial Center Condominium Association, Inc. The Association is incorporated as a non-profit corporation under the laws of the State of Colorado.

3.3 **Number of Units.** The current number of Units in the Project is 46, plus 46 Parking Units.

3.4 **Identification of Units.** The Map will adequately identify each Unit in the Project, together with the building in which it is situated, and all Parking Units.

3.5 **Description of Units; Use.**

3.5.1 Each Unit, the appurtenant interest in the General Common Elements, Limited Common Elements, shall comprise one Unit. Each Unit shall be inseparable and may be transferred, leased, devised or encumbered only as a Unit.

- 3.5.2 Any instrument affecting a Unit or a Parking Unit may describe it by its Unit number or Parking Unit number (P-____), GLENWOOD COMMERCIAL CENTER CONDOMINIUMS, County of Garfield, State of Colorado, according to the Map thereof recorded on _____, 2015, at Reception No. _____, in the records of the Clerk and Recorder of the County of Garfield, State of Colorado, as amended from time to time.
- 3.5.3 Each Owner shall be entitled to the exclusive ownership and possession of his/her/its Unit. Each Unit shall be used and occupied solely for business purposes. Each Owner of a Parking Unit shall be free to designate such Parking Unit for exclusive use by itself, its employees, its customers or guests, or for the general public.
- 3.5.4 Each Owner shall have the right to lease all or part of his or her Unit upon such terms and conditions as the Owner may deem advisable. All leases for terms of thirty (30) days or more shall be in writing and shall provide that the lease is subject to the terms of this Declaration and the Bylaws. A Unit may be leased only for the uses prescribed by the Owner and approved by the Board. Any failure of a lessee to comply with the terms of the Association Documents shall be a default under the lease enforceable by the Association as a third-party beneficiary, whether or not the lease contains such a provision.

4. **Condominium Map; Unit Combinations and Disconnections.**

4.1 **Recordation.** The Map has been filed for record in Garfield County, Colorado and approved by the City of Glenwood Springs. The Map may be further supplemented and amended from time to time at the direction of the Board to depict new boundaries of Units and other improvements that are approved with an affirmative vote of at least sixty-seven percent (67%) of the entire voting power of the Association. Any amendment to the Map deemed necessary by the Board and which complies with the requirements of the Act will also be filed for record in the office of the Clerk and Recorder of Garfield County, Colorado.

4.2 **Contents of Map.** In addition to the requirements of the Act, the Map and any amendment will depict the following: the location of the Buildings comprising the Units; the elevation and floor plans; the location of the Units within the Building, both horizontally and vertically; the structural and supporting walls and the common walls between or separating the Units; the location of any structural components or supporting elements of a Unit located within a Building; the designation and dimensions of the General Common Elements and the Limited Common Elements; and the Unit designations and Buildings' symbols. The Map and any amendments thereto may also be supplemented by filing charts or schedules depicting horizontal and vertical dimensions. There will be filed for record as a part of the Map the certificate of a registered land surveyor certifying that the Map substantially depicts the location and the

horizontal and vertical measurements of the constructed Buildings and Units to which it pertains, and the Unit designations and Building designation, and that the Map contains all the information required by Section 209 of the Act.

4.3 **Amendment to Map.** The Association shall be entitled to amend and/or supplement the Map without the approval of the Unit Owners in its sole and absolute discretion: (i) to conform the Map to the actual location of constructed improvements and to establish, vacate and relocate utility and access easements from time to time; or (ii) as may otherwise be permitted by the Act or this Declaration.

4.4 **Inseparability of Unit.** No part of a Unit or of the legal rights comprising ownership of a Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration, except as may be allowed under the Act. Every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Unit or any part thereof shall be presumed to be a disposition of the entire Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association. However, nothing in this Declaration shall prevent more than one person or entity from having an ownership interest in a Unit. Ownership interests may be allocated on a percentage basis as long as such division of ownership does not conflict with prohibitions contained in this Declaration or violate any municipal ordinance or rule of the City of Glenwood Springs.

4.5 **Combination of Units; Renovations.** In addition to the other rights set forth herein, Unit Owners shall, provided the conditions of this Article 4 are observed and in compliance, have the right to install, remove or relocate any interior non-supporting walls within such Unit. The Owner of two horizontally or vertically adjoining Units may combine the Units into one Unit with the prior written consent of the Board and such consent not to be unreasonably withheld. The Board must respond to written requests for combination renovations no later than thirty (30) days after submittal by the requesting Owner. The Owner will be required to comply with any construction policy and other requirements of the Association, the Act, this Declaration and any applicable laws and regulations of the City of Glenwood Springs in effect at the time of the Board's approval. Further, the Board may reasonably request a deposit on architectural review and third party consultant costs be paid by the requesting Owner at the time of the submittal. The Board shall have the right to approve the plans and specifications for combining and/or renovations to the Units prior to commencement of any construction. Any required amendment to the Map and/or Declaration shall be prepared and recorded at the expense of the Owner of the combined Units and/or renovations which require a Map and/or Declaration amendment to reflect the existence and configuration of the new Unit and/or renovated Unit. Every agreement and recorded instrument for the combination of Units will make adequate provision for the preservation of easements and/or relocation of previously established easements with respect to the Units.

Work and renovations will comply with the following additional provisions:

- (a) Owner(s) will obtain all necessary permits and governmental authorizations;
- (b) Owner(s) will comply with the Rules and Regulations and Construction Policy(ies) then in effect;
- (c) the construction work and renovations will comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants, as evidenced by a final certificate of occupancy;
- (d) prior to commencing the work and renovations, the Owner(s) will provide the Board with evidence sufficient to demonstrate that the insurance required to be maintained by such Owner(s) is in full force and effect and the contractor performing the work maintains worker's compensation insurance in the amount required by law and contractor's liability insurance with the limits the Board reasonably requires;
- (e) such Owner(s) will cause the work and renovations to be constructed and completed diligently, in a good and workmanlike manner, free and clear of all mechanics' and materialmen's liens and other claims or liens;
- (f) during the construction process, such Owner(s) will, to the extent consistent with good construction practice, keep the area affected in a safe, neat and clean condition and will coordinate all construction work with the Managing Agent of the Project;
- (g) such Owner(s) will minimize any impact from the construction process on other Units, the Common Elements and the Parking Spaces;
- (h) such Owner(s) will perform the renovations, or cause the work to be performed, in a manner that maintains harmonious labor relations and does not interfere unreasonably with or delay the work of any other contractors then working anywhere on the Project;
- (i) such Owner(s) will, as provided above, reimburse the Association for all costs incurred by the Association in connection with the renovations, such as the increase in costs of trash removal due to the performance of the work; and
- (j) such Owner(s) will, as provided above, pay or cause to be paid all costs of design and construction, as well as Association review and contributions thereto.

Further, An Owner may, subject to the terms and provisions of this Declaration, construct an alteration or improvement, or combination of Units that:

- (a) Does not, either during construction or after completion, impair the structural stability, or building systems of, including, without limitation, any acoustical separation assemblies or other components designated to mitigate the transmission of sound through walls and other physical separations, or diminish the support of any portion of the Project;
- (b) Does not, during construction, substantially and unreasonably impair the use of any Common Element by any Owner or association entitled to use that Common Element;
- (c) Does not, during construction, substantially and unreasonably impair the use

- of any portion of the Project or otherwise adversely affect the Common Elements;
- (d) Does not, after completion of construction, change the appearance or otherwise adversely affect the Common Element (except and unless otherwise approved in accordance herewith);
 - (e) Does not, after completion, affect the appearance of the Project or Parking Spaces.

The Allocated Interests and liability for payment of Assessments for the newly renovated Unit will be equal to the sum of the Allocated Interests and assessment liability for both of the former Units. The combined Unit will be allocated only one vote.

Notwithstanding the foregoing Owner restrictions, the Association may construct an alteration or improvement to a Common Element if the alteration does not permanently impair the structural stability or Building systems of or lessen the support of any portion of the Project; such alteration does not have a materially adverse effect, either during construction or upon completion, upon the use of any Unit or Common Element for its permitted purposes (unless the Owner of the affected Unit consents in writing to such alteration); and the cost of the alteration constitutes a regular Common Expense such that Owner approval of a Special Assessment is not required (or, if a Special Assessment is required, the requisite Owner approval is procured in accordance with this Declaration.)

4.6 Unit Disconnections. An Owner may disconnect previously connected Units based on the same application and requirements set forth above and so long as such Owner satisfies any other conditions imposed by the Board regarding the proposed Unit disconnection. A disconnection application to the Board shall identify the Units to be disconnected and specify in such detail as required by the Board, all demolition or construction necessary to replace the wall dividing the Units to be disconnected that existed between Unit before the creation of the disconnect. The Owner will pay all costs and expenses incurred by the Board and/or the Association relating to the Unit disconnect, including, but not limited to, any engineering and legal costs and expenses.

4.7 Non-partitionability of Common Elements. Except as provided otherwise in this Declaration, the Common Elements shall be owned in common by all of the Owners and shall remain physically undivided. No Owner shall bring any action for partition or division of the Common Elements. Any conveyance, encumbrance, judicial sale, or other transfer (voluntarily or involuntarily) of an individual interest of the Common Elements will be void unless the Unit to which that interest is allocated is also transferred. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of the Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Elements, and this subsection of the Declaration may be pleaded as a bar to the maintenance of such an action. Any Owner who shall

institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amount shall automatically become a Default Assessment determined and levied against such Owner's Unit and enforced by the Association in accordance with this Declaration.

4.8 **Sale of Portions of Common Elements.** No sale of any portion of the Common Elements shall be made without the affirmative vote of at least sixty seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. In conveying the designated portions of the Common Elements, the Association is empowered to act on behalf of every Owner once the requisite ownership approval has been obtained.

5. **Owners' Property Rights in Common Elements.**

5.1 **General Common Elements.** Subject to Article 10 below, every Owner and the guests, tenants and licensees of each Owner shall have a perpetual right and easement of access over, across and upon the General Common Elements for the purpose of getting to and from each Unit, and public or private ways for both pedestrian and vehicular circulation and use as depicted on the Map, which right and easement shall be appurtenant to and pass with the transfer of title to each Unit. However, every such right and easement shall be subject to the following:

- 5.1.1 the covenants, conditions, restrictions, easements, reservations, rights of way, and other provisions contained in this Declaration and the Map;
- 5.1.2 the rights of the Association to adopt from time to time any and all rules and regulations concerning vehicular traffic and travel upon, in, under and across the Project; and
- 5.1.3 the rights of the Association to adopt from time to time any and all rules and regulations concerning the Common Elements as the Association may determine is necessary or prudent.

5.2 **Limited Common Elements.** Subject to the provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy any Limited Common Elements appurtenant to his/her/its Unit if so depicted on the Map. Any balcony, patio, or terrace which is accessible from, associated with or which adjoin(s) a Unit and is identified as a Limited Common Element on the Map shall, without further reference thereto, be used in connection with such Unit to the exclusion of the use thereof by the Owners of the General Common Elements, except by invitation.

6. **Membership and Voting Rights; Association Operations.**

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

6.2 **Transfer of Membership.** An Owner shall not transfer, pledge or alienate his/her/its membership in the Association in any way, except upon the sale or encumbrance of his or her Unit and then only to the purchaser or Mortgagee of his/her/its Unit.

6.3 **Membership in Association.** The Association shall have only one class of membership consisting of all Owners. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 6.5 below. Each Owner is subject to all the rights and duties assigned to Owners under the Association Documents.

6.4 **Voting Rights.** Each Member shall be entitled to vote in Association matters pursuant to this Declaration. Votes will be allocated based on the formula of one (1) vote for each Unit owned by said Owner; provided, however, that each such vote shall be weighted in proportion to the Allocated Interests in the General Common Elements as set forth in Exhibit B attached hereto (the "Allocated Interests"). **Owners of Parking Units do not receive any additional votes and do not have any additional voting rights by virtue of owning a Parking Unit.** When more than one person holds an ownership interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised by one person as the Owners determine among themselves. If more than one of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to his/her/its Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

6.5 **Notice of Membership.** Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or other evidence as may be specified by the Board which vests the person with the interest required to make him/her/it a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Association Documents. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and present the most recent written notice received by the Association with respect to each Member.

6.6 **Compliance with Association Documents.** Each Owner will abide by and benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

6.7 **Managing Agent or Manager.** The Association may employ or contract for the services of a Managing Agent to whom the Board may delegate certain managerial and administrative powers and functions, as provided in the Bylaws of the Association. The

Managing Agent shall have the authority to make expenditures under the general direction of the Board.

6.8 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. The Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity after compliance with the Dispute Resolution provision set forth herein at Article 24. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

6.9 Notice. Any notice to an Owner of matters affecting the Project from the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record on file with the Association for that Owner.

6.10 Powers of the Unit Owners' Association. The Association shall have all of the powers, authority and duties permitted under the Act and under the Colorado Revised Nonprofit Corporation Act ("CRNCP"). The Association, acting through the Board, may (without specific authorization in the Declaration):

6.10.1 Adopt and amend any rules and regulations of the Association;

6.10.2 Adopt and amend Bylaws;

6.10.3 Adopt and amend budgets for revenues, expenditures and reserves and collect Assessments;

6.10.4 Hire and terminate Managing Agent(s) and other employees, agents and independent contractors;

6.10.5 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

6.10.6 Make contracts and incur liabilities;

6.10.7 Regulate the use, maintenance, repair, replacement and modification of Common Elements, and further lease or license, or permit the use of, by less than all Owners and/or non-Owners, on either a short or long-term basis, and with or

without charge as the Board deems fit, any portion of the General Common Elements and/or any Unit owned by the Association;

6.10.8 Cause minor improvements (not exceeding \$25,000 for any improvement project) to be made to the Common Elements. If such project cost exceeds the permitted amount the Board must solicit 67% Owner approval;

6.10.9 Grant long or short-term easements, leases, licenses and concessions through or over the Common Elements as provided herein;

6.10.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements as provided herein;

6.10.11 Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;

6.10.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

6.10.13 Provide for the Association's indemnification of its officers and members of the Board, and also to maintain directors' and officers' liability insurance as determined to be appropriate by the Board or the Owners;

6.10.14 Borrow funds to cover Association expenditures and pledge Association assets as security therefor, subjecting Common Elements to a security interest in connection therewith;

6.10.15 Assign, pledge and collateralize its right to future income, including the right to receive Assessments;

6.10.16 Exercise any other powers conferred by the Declaration or the Bylaws;

6.10.17 Exercise all other powers that may be exercised in Colorado by legal entities of the same type as the Association; and

6.10.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

8. **No Master Association; No Delegation of Powers.** In no event shall the Association be deemed a "Master Association" under the Act, to which some or all of the Association's powers may be delegated.

9. **Mechanic's Liens; Indemnification.**

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

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

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

10. **Easements.** The following irrevocable, perpetual easements are hereby granted:

10.1 **Recorded Easements.** The Project shall be subject to all easements as shown on the Map and any supplement or amendment thereto as well as those indicated on any recorded document. The Project shall also be subject to the easements as provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Section and on any exhibit to this Declaration.

10.2 **Association's Rights Incident to Construction.** The Association, for itself and its Members, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any renovations of the Units or improvements on the Project, Property or other real property owned by the Association, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by the Association in a way which unreasonably and materially interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

10.3 **Utility Easements.** There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Project for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Project, subject to approval by the Association as to locations.

10.4 **Easement for Access, Support.** The Association is hereby granted the right, for reasons of security, to limit access to certain floors of the Building to those Owners and their guests, invitees owning Units on such floors, and excepting therefrom in the event of emergency in which event all Owners shall have access, via certain elevator(s) and stairwells; each Owner shall have a nonexclusive easement for access between his/her/its Unit and the public roads and streets adjacent to the Project and Map between his/her/its Unit and the Parking Spaces, sidewalks and stairwells within the Project. Each Owner shall have a nonexclusive perpetual easement in and over the General Common Elements, including the General Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit which is part of his/her/its Unit and utility purposes.

10.5 **Easements for Encroachments.** If any part of the General Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of same shall and does exist in perpetuity. If any part of a Unit encroaches or shall hereafter encroach upon the General Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for such encroachment and for maintenance of same. Such encroachments shall not be considered to be encumbrances either on the General Common Elements or on a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by errors in the original construction of the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or renovations of the Project or any part hereof.

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

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

10.8 **Driveway Access Easement.** Declarant hereby establishes and grants the following non-exclusive driveway access easement to provide unobstructed vehicular and pedestrian ingress and egress upon and as to each of the Units and Common Elements for the purposes of access the Units, Parking Units and the property described as Common Elements on the Map, including without limitation access to the detention ponds to the north of the Units. The vehicular access as illustrated on the Map shall be kept open and unobstructed at all times, and nothing shall allow any Owner, or invitee thereof any right to obstruct access within this area. This access easement shall be for the benefit of the parties identified in this paragraph but it is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the boundaries as identified in the Map.

10.9 **Easement for Communications Equipment.** Declarant hereby establishes and grants to itself, a perpetual exclusive easement of 258.8 square feet in the northeast corner of Unit 4-G and also an exclusive easement as shown on the Map as Equipment Easement No. 1, and a perpetual non-exclusive easement on the roof and other Common Elements within Building 4, for the purposes of installation, operation and maintenance of antennas over and under the Property and on the roof of building D for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among said easement areas and to all necessary electrical and telephone utility sources located within the building or on the Property and the non-exclusive right of ingress and egress from a public right of way seven days a week, twenty four hours a day, over the Property and in and through building D for the purpose of the installation, operation and maintenance of a communications facility within the Property. This easement may be amended by the Declarant without the approval of the Owners at any time, except that any amendment affecting Unit 4-G shall require the consent of the Owner of said Unit. This easement may not be amended or terminated by the Owners without the written consent of Declarant and without regard to whether the Declarant owns any portion of the Property at the time of the Amendment.

11. **Easements and Maintenance.**

11.1 **Maintenance by Owners.** Each Owner shall, at each Owner's expense, maintain and keep in good repair the interior portions of his/her/its Unit, which shall include all nonbearing and bearing walls, interior wall surfaces such as subflooring, plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including repair and replacement of all doors and windows, and plumbing elements and utility lines and fixtures at their points of entry into the Unit, and each Owner shall also maintain and keep in repair the structural and surface elements of all Limited Common Elements associated with his/her/its Unit. These maintenance and repair obligations shall be performed on

a regular basis by the Association on behalf of the Owner(s) at the Owner(s) sole cost and expense, and in a manner that will avoid damaging other Units or any structural elements. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall do no act or work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of interior wall surfaces such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including all doors and windows.

11.2 **Owner's Failure to Maintain or Repair.** In the event that a Unit (including the allocated Limited Common Element) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Section 14.9 of this Declaration.

11.3 **Maintenance by Association.** Other than as provided in Section 11.2 of this Declaration which addresses Owners' financial responsibility for Unit repairs, maintenance and replacements, the Association shall be responsible for the maintenance, repair, control, replacement and improvement of the Common Elements and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The maintenance of the Common Elements shall include, without limitation, ongoing maintenance of pavement and striping for the parking spaces and driveway, ongoing maintenance of landscaping and irrigation systems, ongoing maintenance of the exterior building lighting and bollard lighting for parking areas, snow removal, ice removal and trash removal therefrom. The Association shall also maintain, provide access to and trash removal services for all trash enclosures. The Association will perform an annual inspection of all fire sprinkler systems in each building as well as maintenance as required to keep such systems in good repair and working order. The expenses, costs and fees of such management, operation, maintenance and repair by the Association shall be part of the Assessments, and prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs and fees.

11.4 **Association Maintenance as Common Expense.** The cost of maintenance and repair of the Common Elements and Amenities by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefor set forth on Exhibit B attached hereto. Damage to the interior or any part of a Unit

resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be a Common Expense of all of the Owners.

11.5 **Owner's Negligence or Intentional Conduct.** In the event that the need for maintenance, repair or replacement of all or any portion of the Common Elements or the interior of any part of a Unit is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guest, invitee, licensee or tenant, then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within thirty (30) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Declaration, and such expenses shall automatically become a Default Assessment enforceable hereunder.

11.6 **Easement for Maintenance.** The Association shall have the irrevocable right, to be exercised by the Manager, the Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

11.7 **Association's Right to Grant Owner's Maintenance Area.** The Association reserves the right to grant the maintenance responsibility of certain areas on each Unit to the Unit Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

11.8 **Easement for Maintenance of Stormwater Facilities.** There is a perpetual, appurtenant easement in gross over, under, across and upon the Property for the following purposes: to access, inspect, maintain, repair and/or replace any one or more of the stormwater facilities and/or any of their component parts. The easement may be used by the City of Glenwood Springs ("City") and/or the Association. The Association shall, as a Common Expense, inspect the stormwater facilities no less frequently than once per calendar year and shall perform such maintenance and repair as may be necessary to keep and maintain the stormwater facilities in good condition and repair and functioning as intended, in compliance with City ordinances.

12. **Powers and Duties of the Board of Directors.**

12.1 **Powers of the Board of Directors.**

- 12.1.1 **Board's Power.** Except as provided in the Declaration and Bylaws, the Board of Directors may act in all instances on behalf of the Association. Each Owner, by taking title to a Unit, appoints the Association as its duly authorized representative and grants to the Association, acting through its officers under the authority of the Board, an irrevocable power of attorney, coupled with an interest, to exercise the rights of the Association.
- 12.1.2 **Limitations of Board Power.** The Board may not act on behalf of the Association to amend the Declaration, to terminate the common interest community, or to elect members of the Board or determine the qualifications, powers and duties, or terms of office of the Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term. In addition, the Board may not approve the sale of any General Common Elements or approve the expenditure of any sum in excess of \$25,000 for non-emergency capital improvement purposes without a signed ballot vote of at least sixty-seven percent (67%) of the votes entitled to be cast by the Members.
- 12.1.3 **Enforcement.** The Board will provide for enforcement of the Association rules as set forth in the Bylaws and this Declaration. Without limiting the generality of the foregoing, the Board may suspend the voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the rules and/or nonpayment of Assessments.

12.2 **Delegation by the Board of Directors.**

- 12.2.1 **Delegation to Managing Agent.** The Association, acting through the Board, may employ or contract for the services of a Managing Agent to act for the Association and the Board and the officers according to the powers and duties delegated to the Managing Agent pursuant to the Bylaws or the resolution of the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a Managing Agent of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.
- 12.2.2 **Committees.** The Association, acting through the Board, may delegate any of its rights, duties or responsibilities to any committee or other entity that the Board may choose to form.
- 12.2.3 **Limitation.** Any delegation by the Board under this Section is subject to compliance with the Act and the Bylaws and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Association Documents and the Act.

12.3 **Acquiring and Disposing of Personal Property.** The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and 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 (Allocated Interests) in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

12.4 **Contracts with Others.** The Association may contract with the City of Glenwood Springs or with other homeowners' associations or owners of nearby property in order to provide services required herein or by law for the benefit of Owners and their family members, guests, tenants and invitees. Any resulting costs incurred by the Association shall be a Common Expense. The Association may contract with third parties and/or other homeowners' associations or owners of nearby property in order to gain access to amenities or other arrangements beneficial to Owners and their family members, guests, tenants and invitees.

12.5 **Books and Records.** The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents, and the books, records, and financial statements of the Association prepared pursuant to the Bylaws, as well as any management agreement. The Managing Agent shall send or otherwise make available to each owner on an annual basis, a copy of the Association's financial statements for the preceding year, which will be available within 120 days after the end of the Association's fiscal year except due to any unusual circumstance.

12.6 **Reserve Account.** The Association, through the Board, shall establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Article 14 for maintenance, repair or replacement of the Common Elements. This fund shall be replenished on a periodic basis and shall also be utilized for expenses relating to any facilities made available to the Association that must be replaced on a periodic basis.

12.7 **Implied Rights and Obligations.** The Association will perform all of the duties and obligations imposed on it expressly by the Association Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Association Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Association Documents and/or Colorado law, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Association Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

13. **Insurance.**

13.1 **General Insurance Provisions.** The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Article will be included in Common Expenses:

13.1.1 **Property Insurance Coverage.** The Association will obtain and maintain property insurance in amounts, against risks, and containing provisions the Board reasonably determines from time to time. At a minimum, the Association's insurance will insure against all risks of direct physical loss for 100% of the full replacement cost (at the time the insurance is purchased and at the renewal date) of (1) the Units, but not the finished interior surfaces of the walls, floors and ceilings of the Units or the improvements or betterments installed in the Units; (2) the Common Elements and all fixtures, improvements and alterations situated on or constituting a part of the Common Elements; and (3) any personal property of the Association situated in the Common Elements or used in the operation or maintenance of the Common Elements. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners, who shall be named as additional insureds, and Mortgagees, who may be named as additional insureds, as their interests may appear. To the extent available such property insurance also will (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims, against each Owner and the members of the Owner's household; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iv) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration of the Act; (v) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) provide that it may not be canceled, nor may coverage be reduced, without thirty (30) days prior written notice to the Association and all additional insureds names in the policy; and (vii) include so-called "inflation guard," "building ordinance or law" "steam boiler and machinery coverage" endorsements. If, as a result of any improvements or

alterations made to or concerning a Unit by its Owner, the premium for the Association's property insurance policy is increased to an amount exceeding what the premium should have been if the Owner had not made the improvements or alterations, the Board may assess the amount of the increase in premium against the Owner's Unit as part of its Assessment.

13.1.2 **Liability Insurance.** The Association will obtain and maintain Comprehensive Liability Insurance for bodily injury and property damage for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Elements. Such liability insurance will have a combined single occurrence limit of not less than \$5,000,000 and, to the extent available on reasonable terms, will (i) be on a commercial general liability form; (ii) contain a "severability of interest" or "cross-liability" endorsements which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, Owners and members of their households; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use ownership or maintenance of the Common Elements; and (vii) provide that it may not be canceled, nor may coverage be reduced, without forty-five (45) days' prior written notice to the Association and all additional insureds named in the policy. The liability insurance required to be maintained under this Section will not include coverage for any liability arising out of the ownership, operation, use or maintenance of any Unit.

13.1.3 **Worker's Compensation and Employer's Liability.** The Association will obtain and maintain worker's compensation and employer's liability insurance as determined from time to time by the Board. At a minimum, the Association will maintain such insurance in amounts and with coverages required by applicable law.

13.1.4 **Automobile Insurance.** If the Association operates owned, hired or non-owned vehicles, the Association will obtain and maintain comprehensive

automobile liability insurance at a limit of liability of not less than \$500,000 for combined bodily injury and property damage.

- 13.1.5 **Directors and Officers' Insurance.** The Association will obtain and maintain directors' and officers' liability coverage in an amount determined by the Board from time to time.
- 13.1.6 **Fidelity Insurance.** The Association will obtain and maintain fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, officers, managing agents, trustees, employees or volunteers who manage the funds collected and held for the benefit of the Association. The policy will name the Association as the insured (or obligee) and include a provision requiring at least thirty (30) days' prior written notice to the Association before any cancellation of, or material modification in, the policy and provide coverage in an amount equal to at least three months' General Assessments against all Units, based on the General Assessments most recently approved by the Board. If the Association engages a Managing Agent that handles funds of the Association, the Managing agent will also maintain fidelity insurance satisfying the foregoing requirements of this Section and the Act, and provide evidence of said coverage to the Board on an annual basis.
- 13.1.7 **Other Insurance.** The Association may obtain and maintain other insurance as the Board, from time to time, deems appropriate to protect the Association or the Owners.
- 13.1.8 **Licensed Insurers.** All policies of insurance required to be maintained by the Association will be placed with insurers licensed in the State of Colorado. The carrier shall be required to provide to the Board at the inception of the policies and on each anniversary date, a summary that includes a description of the type of policy, the coverage and limits of coverage, the amount of annual premium and the policy renewal dates. If obtainable without additional expense, the licensed insurance broker or agent shall certify that the policy complies with and satisfies the requirements of this Section.
- 13.1.9 **Owner's Insurance.** Each Owner has the following responsibilities with respect to insurance:
- (a) **Property Insurance.** Each Owner will keep and maintain (at its expense), property insurance upon the Owner's Unit to the extent not otherwise covered by the Association's insurance described above, and all personal property and fixtures within the Owner's Unit, in such

amounts, and against such risks, and containing such provisions, as the Owner may reasonably determined from time to time. Such property insurance will (i) permit a waiver of claims by the Owner and provide for a waiver of subrogation rights by the insurer as to claims, against the Association, its directors, officers, employees and agents, the other Owners and the members of such Owners' household; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association carries; and (iii) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect not to restore the damage in accordance with the provisions of this Declaration or the Act. All insurance carried under this Section will provide that it may not be canceled, nor may coverage be reduced, without thirty (30) days' prior written notice to the Association and, notwithstanding that each Owner may select the amount and type of insurance, for purposes of the waiver of claims set forth below, each Owner is deemed to have elected to obtain such insurance on a 100% replacement cost basis.

- (b) **Liability Insurance.** Each Owner will maintain at its expense, bodily injury and property damage liability insurance for the benefit of the Owner, naming the Association as additional insured and any other additional insured(s) it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; provided that such liability insurance will (i) have a combined single occurrence limit of not less than \$500,000; (ii) be written as a primary policy, not contributing with and supplemental to any coverage that the Association or another Owner carries; (iii) insure the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Owner's Unit; and (iv) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, owners and members of their households.
- (c) **Other Insurance.** Each Owner may obtain additional insurance, at its own expense, affording personal property, condominium assessment, loss of rents, personal liability and any other coverage obtainable, to the extent and in an amount the Owner deems necessary to protect its interests. Any such insurance will contain waivers pursuant herewith and will provide that it is without contribution as against the insurance maintained by the Association.

(d) **Assignment of Proceeds.** If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable under any policy of insurance carried by the Association due to the existence of any insurance carried by an Owner, that Owner is liable to the Association to the extent of the reduction and will pay the amount of the reduction to the Association upon demand; such Owner also hereby assigns the proceeds of its insurance, to the extent of such reduction, to the Association.

13.1.10 **Certificates of Insurance; Notices of Unavailability.** Each Owner will provide to the Association no less than ten (10) days subsequent to any purchase of a Unit or expiration of any coverage, certificates of insurance evidencing the insurance required to be carried hereunder. The Association will provide each Owner certificates of insurance evidencing the insurance required to be carried by the Association hereunder and naming each Owner as an additional insured under such policies. If the insurance described above is not reasonably available for Owner coverages, or if any policy of such insurance is canceled or not promptly renewed and the Association does not obtain a replacement policy for it, the Association promptly will give notice of that fact to all Owners and the Board will use reasonable best efforts to achieve a similar result.

13.1.11 **Waiver of Claims.** The Association will make no claim against any Owner or the members of the Owner's household, for any loss, damage, injury or liability; no Owner will make any claim against the Association, its directors, officers, employees or agents, or any other Owner or member of such Owner's household for any property loss or damage to property, and all such claims are hereby waived, to the extent that the loss, damage injury or liability is or would be covered by any insurance policy that is required under this Declaration (a) to be maintained by or for the benefit of the waiving Persons (assuming in the case of property insurance policies that such insurance policy is maintained on a 100% replacement costs basis), and (b) to provide for a waiver of subrogation rights by the insurer. For purposes of this Section, the deductible or self-insured retention amount under any property insurance policy required to be, or in fact, maintained by a waiving Person is deemed to be covered by the policy so that, in addition to waiving claims for amounts in excess of the deductible or self-insured retention (up to the covered limits or deemed coverage limits, of the policy), the waiving Person waives all claims for amounts within the deductible or self-insured retention.

13.2 **Insurance Proceeds.** Any loss covered by the property insurance policy described in this Section must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the

Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of this Section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the Project is terminated due to a complete loss event.

14. **Assessments.**

14.1 **Obligation.** Each Owner is obligated to pay to the Association (i) the General Assessments; (ii) Special Assessments and (iii) Default Assessments imposed by the Board to meet the Common Expenses.

14.2 **Budget.** The Board shall have the responsibility and authority to propose, adopt and enforce a budget for the Association each year. The Board shall develop a separate budget for the Parking Spaces. Within thirty (30) days after the adoption of any budget, the Board shall mail or otherwise deliver a copy of the budget to all the Owners. The adopted budget shall be subject to ratification or rejection at the annual meeting or any special meeting of the Owners. However, the adopted budget shall be enforceable unless specifically rejected by a majority of the Owners. In the event that the adopted budget is rejected, the periodic budget last adopted or ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall adopt a budget as provided herein no less frequently than annually. The Board shall levy and assess the Annual Assessments in accordance with the annual budget.

14.3 **Annual General Assessments.** Annual General Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, including, but not limited to, common area furniture and furnishings, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, care of grounds and landscaping within the Common Elements, routine repairs, replacements and renovations within and of the Common Elements, wages, any common water and utility charges for the Common Elements, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles, routine maintenance, and repairs and replacement of improvements within the Common Elements on a periodic basis, as determined by the Board.

Seventy-six percent (76%) of the budget for the Parking Spaces will be assessed to the Owners as part of the Annual General Assessment for the Parking Spaces allocated as Limited Common Elements. The remaining twenty-four percent (24%) of the budget for the Parking Spaces will be assessed equally among the owners of the Parking Units. However, in the event that the Declarant has not transferred ownership of a Parking Unit and allows Parking Unit(s) to be used by the Owners on a first-come first-served basis, those shares of the Parking Unit expenses shall be allocated to the Owners equally. The Parking Unit expenses are treated the same as General Assessments.

For the sake of clarity and by way of example, there are 46 Parking Units. If the Declarant owns 30 spaces and allows the Owners to use 20 spaces, the Declarant shall only be assessed for the 10 spaces it has not allowed the Owners to use, and the Owners shall pay the expenses associated with the 20 spaces (i.e. Declarant would pay $10/46^{\text{th}}$ of the twenty-four (24%) the Parking Space budget). If a Person owns two (2) Parking Units, then such Person shall be allocated $2/46^{\text{th}}$ of the twenty-four percent (24%) of the budget for the Parking Spaces.

General Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each month. The omission or failure of the Board or the Association to fix the General Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Board shall have the right, but not the obligation, to make prorated refunds of any Annual General Assessments in excess of the actual expenses incurred in any fiscal year.

General Assessments are due and payable no later than the 15th of each calendar month. Assessment amounts due shall bear interest at the rate of eighteen percent (18%) per annum from the date due, compounded annually. Late charges and collection matters shall be in accordance with policy(ies) adopted by the Board from time to time.

14.4 **Apportionment of Annual Assessments.** The General Assessments shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses set forth on Exhibit B attached hereto; provided, however, that the Board reserves the right to allocate any and all expenses relating to fewer than all of the Units to the Owners of those affected Units as a Limited Common Element expense, a reimbursable expense, or otherwise.

14.5 **Special Assessments.** In addition to the General Assessments, the Board may levy in any fiscal year one or more Special Assessments, payable over such a period as the Board may determine, for the purpose of deferring, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense or purchase incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Special Assessments may also be levied for Parking Units. Any amounts assessed hereto shall be assessed to owners in proportion to their Allocated

Interests in the General Common Elements or Limited Common Elements, as applicable. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been mailed to the registered mailing address of the respective Owner on file with the Association. A Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

14.6 **Special Allocations.** Any amounts assessed under this Declaration shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Board to levy Assessments only against the Owners of Units which require extraordinary maintenance, repair or restoration work. Any extraordinary insurance costs incurred by the Association because of the value of a particular Owner's Unit or the actions of a particular Owner (or his/her/its agents, servants, guests, tenants or invitees) shall be borne by that Owner.

14.7 **Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be classified as a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration and policy(ies) adopted by the Board from time to time, commensurate with Colorado law. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

14.8 **Working Capital Fund.** To provide the Association with sufficient working capital to cover the cost of unforeseen expenditures or to purchase any additional equipment or services, a Working Capital Fund is instituted, effective upon recordation of this Declaration, in an amount equal to three months' worth of Annual Assessments per Unit. For each Unit, the contribution for the Working Capital Fund is due on the closing of the sale of the Unit by an Owner. Amounts contributed to the Working Capital Fund do not constitute advance payments of Annual Assessments and are nonrefundable.

14.9 **Effect of Nonpayment; Assessment Lien.** Any Assessment installment, whether pertaining to any General, Special or Default Assessment, which is not paid on or before its due date shall be delinquent. Such delinquent amounts, together with fines, interest, costs, and reasonable attorneys' (and legal assistants') fees and other charges allowed under the Act shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such Assessment is made until paid. Each such Assessment shall be the individual obligation of the Owner of such Unit as of the time the Assessment falls due, and two or more Owners of a Unit shall be jointly and severally liable for such obligations. No Owner may exempt himself/herself/itself from liability for any Assessments by abandonment or leasing of his/her/its Unit or by waiver of the use or enjoyment of the Common Elements. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- 14.9.1 Assess a late charge for each delinquency in such amount as may be provided in the policy(ies) adopted by the Board from time to time and as the Board deems appropriate;
- 14.9.2 Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Board may establish, subsequent to expiration of any cure rights during which time the delinquent interest rate shall apply;
- 14.9.3 Suspend the voting rights of the Owner during any period of delinquency;
- 14.9.4 Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Element facilities and Amenities during any period of delinquency;
- 14.9.5 Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- 14.9.6 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and/or
- 14.9.7 Proceed with foreclosure as set forth in more detail below and as provided by Colorado law.

Suit to recover a money judgment for unpaid Assessments and related charges may be maintained without foreclosing or waiving the Assessment liens provided hereunder. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

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

14.11 **Successor's Liability for Assessment.** All successors to the fee simple title of a Unit will be liable for Assessments levied during the prior Owner's ownership of the Unit. Any successor may rely on the statement of status of Assessments given by or on behalf of the

Association. Any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, shall take the Unit free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, except as provided in the Act.

14.12 **Reallocation of Assessments Secured by Extinguished Lien.** The sale or transfer of any Unit to enforce any of the liens to which the lien for Assessments is subordinate shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer to the extent provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Board. However, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

14.13 **Exempt Property.** The following portions of the Project shall be exempt from the Assessments, charges and liens created under this Declaration:

- 14.13.1 all properties to the extent of any easement or other interest therein dedicated and accepted by the City of Glenwood Springs and devoted to public use;
- 14.13.2 all utility lines and easements; and
- 14.13.3 the Common Elements.

14.14 **Protection of Association's Lien.** The Board or its representative, acting on behalf of the Association, may protect the Association's lien for Assessments against any Unit by submitting a bid at any sale held for delinquent taxes payable with respect to the Unit.

14.15 **Failure to Assess.** The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

14.16 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board and upon fourteen (14) days' prior written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the

inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

14.17 **Maintenance Accounts; Accounting.** If the Association delegates powers of the Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or Managing Agent must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve or working capital accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

15. **Use and Activity Restrictions; Power of Association; Rules & Regulations.**

15.1 **Association Power.** The Association shall have the right and power to prohibit storage or other activities deemed, by the standard of a reasonable person, to be unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements.

15.2 **Permitted Uses of Units.** All Units may be used for any purpose authorized by the applicable zoning and land use regulations of the City of Glenwood Springs.

15.3 **Use of Parking Spaces.** Certain parking spaces, as labeled on the Map, as reserved for the exclusive of use of the Unit assigned thereto. The Parking Spaces not identified as Parking Units and not identified as Limited Common Elements are General Common Elements available on a first-come first-served basis for parking for Owners, their customers and guests. No parking space may be used for storage. Only operable vehicles may be parked in parking spaces. No RV, trailers, vehicles over seven feet in height or over 22 feet in length without the prior written approval of the Board.

15.4 **Conveyance of Units.** All 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 other provisions contained in this Declaration, as the same may be amended from time to time.

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

15.6 **Prohibition of Increases in Insurable Risks and Certain Activities; Indemnification.** Nothing shall be done or kept in any Unit or in or on the Common Elements,

or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Elements which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Elements shall be committed by any Owner, or by any member of the Owner's family or by any guest, invitee, or contract purchaser of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by it, the members of its family or entity, or such Owner's guests, invitees, tenants or contract purchasers. Each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and the other Owners from and against any and all damages, claims, demands, liens, losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever (collectively referred to as "Indemnity Claims") suffered or incurred by, or threatened or asserted against, the Association or any other Owner as a result of or in connection with the (i) willful misconduct, negligence or breach; (ii) any repair, restoration, replacement, alteration or other construction, demolition, installation or removal work on or about the Project contracted for, or performed by, the indemnifying Owner or its permittees; and (iii) the operation, use, ownership or maintenance of the indemnifying Owner's unit by the indemnifying Owner or its permittees. The indemnifying Owner will pay for all Indemnity Claims suffered or incurred by the Association for which the indemnifying Owner is responsible promptly upon receipt of a demand for payment from the Association. The amount of the Indemnity Claims will constitute Special Assessments against the indemnifying Owner's Unit. If the indemnifying Owner fails to make such payment within 30 days after receipt of the Association's demand for it, the Association may take whatever lawful action it deems necessary to collect the payment including, without limitation, foreclosing its lien or instituting an action at law or in equity. Nothing in this Declaration relieves any Person from liability for its own acts or omissions. Nothing contained in this Section will be construed to provide for any indemnification which violates applicable laws, voids any or all of the provisions of this Section or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or the Owner have by law.

15.7 **Structural Alterations and Exterior Appearance.** No structural alterations to any Unit or any Common Element, and no structural alterations or enclosures to any windows, doors, patios or balconies, shall be made by any Owner without the prior written approval of the Board, which consent may be reasonably withheld, and without compliance with this Declaration for renovations.

15.8 **Signs and Exterior Decorations.** No signs of any kind shall be displayed to the public view on or from any portion of a Unit without first obtaining the written approval of the Board. The size, number, design and location of such signs requiring approval shall be approved by the Board. No exterior decorations that are visible for public view from outside the Unit will be allowed without first obtaining the written approval of the Board. American flags and service

flags are allowed to the extent provided by Colorado and federal law, however, the Board may adopt reasonable rules and regulations regarding the size and manner of display of flags.

15.9 **Overloading.** The Project may not be used for any use beyond the maximum loads the floors of the Project are designed to carry and no apparatus, equipment, fixtures or other property of any nature may be located within the Project if the same, singularly or in the aggregate, would violate the maximum loads that the structural flooring in the Project is designed to support.

15.10 **Animals and Pets.** No animals, livestock, insects, rodents, poultry, reptiles, birds or other pets may be kept within the Units or Common Elements, except that a Unit Owner may have up to two dogs and/or cats. No pet may be kept, bred or maintained for any commercial purposes unless such Unit is operated as a pet store. No pet may be kept or maintained on any balcony or patio. If a pet becomes obnoxious to any other Owner, its tenants or their respective invitees, the Owner or the person having control (or lack thereof) over the animal will be given a written notice to correct the problem by the Association. If such problem is not corrected, the Owner, upon written notice from the Association, may be required to remove the animal from the Project permanently. The Owner, Owner's tenants or invitees having control over the pet are responsible for cleaning up after the pet and will hold the Association harmless from any liability, claim, damage, cost or expense resulting from any action or inaction of their pet. Any time a pet is outside the Unit or on a Common Element or Limited Common Element, it must be accompanied by its Owner, Owner's tenant or invitee, and on a leash and otherwise under control. The Association Rules and Regulations shall further describe pet restrictions.

15.11 **Trash.** No trash, ashes, building materials, firewood or other unsightly items should be thrown, dumped or stored on the Project, except as designated by the Association. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage of refuse within the Unit.

15.12 **Construction Rules and Regulations.** All Owners and contractors shall comply with the construction-related rules and regulations regulating any construction activities, whether engaged in the activities contemplated by Article 4 or this Article (repairs to existing improvements). Such regulations may affect, without limitation, the following: trash and debris removal; restoration of damaged property; conduct and behavior of contractors, subcontractors and Owners' representatives on the Project at any time; fire protection; completion and compliance deposit; and reimbursement to the Association for professional fees related to approval of any construction activities, as deemed reasonably necessary by the Board.

15.13 **Compliance with Laws.** Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Project. Further, no Owner shall dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Project or dispose of any material on the Project that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

15.14 **Antennae**. Except for equipment within easements authorized by Section 10.9, above, no exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted outside any Unit without first obtaining the written consent of the Board. The Association may install one or more exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device for the Project.

15.15 **Outside Burning**. There shall be no exterior fires, including barbecues, without prior written approval of the Board. No Owner shall permit any condition upon a Unit which creates a fire hazard or is in violation of fire prevention regulations.

15.16 **Nuisance**. No obnoxious or offensive activity shall be carried on within the Project, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Project so as to be offensive or detrimental to any other part of the Project or its occupants.

15.17 **Leasing**. If an Owner leases a Unit, the Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant. The Owner shall have the right to obtain reimbursement from the tenant for any sums paid by the Owner on behalf of the tenant. Any lease of a Unit for a term of 30 days or more must be in writing and must state that it is subject to the requirements of the Association Documents. Any lease of a Unit for a term of 30 days or more must contain compatible use and activity restrictions as are provided for in the Association Documents.

15.18 **Building Security and Rights of Entry**. Owners, their tenants and invitees may enter and exit the Project at any time and the Association shall not be deemed under any circumstances to guarantee the safety and security of the Owners, their tenants and invitees or the security of the personal property of such persons. The Association hereby disclaims all responsibility to ensure the security and safety of persons and property within the Project and no Owner or Person shall be entitled to rely upon the appearance or presence of any security or access control devices within the Project as a guarantee of safety or security.

15.19 **Large Deliveries/Moving Procedures**. Delivery or large and/or heavy items shall be coordinated with the Managing Agent to assure there is not inconvenience, blockage or overloading issues.

15.20 **Minimum Heating**. The Units must be heated as necessary to maintain a minimum temperature of 55 degrees Fahrenheit from October 1 through May 30 every year. The Association may enter any Unit to inspect or confirm the same.

15.21 **Window Coverings; Windows and Glass Doors**. The back or window-side of all window coverings consisting of drapes, curtains and blinds must be backed with a dark brown, dark-grey or black material. The material must be a solid color, no patterns are permitted. Each Unit shall have interior window coverings at all times. Each Owner shall

maintain, repair and replace, at such Owner's sole cost and expense, window coverings in accordance with the Rules and Regulations. No exterior windows or glass doors within the Units may have any reflective or tinted substance placed on them. No unsightly materials may be placed on any window or glass door or be visible through such window or glass door, and all glass doors must be approved by the Board in writing prior to installation.

15.22 **Stereos and Theater Systems.** No stereo speaker may be installed within the Units in a manner that results in the speaker penetrating any shared wall, ceiling or floor except and unless approved by the Association in writing. In addition, no stereo speaker may be operated within the Units in a manner in which sounds are heard or vibrations are felt outside of the Units. No speakers may be installed or used on any of the balconies or patios attached to the Units.

15.23 **Recreational Equipment.** No bicycles, tricycles, skateboards, roller blades or other types of wheeled, non-motorized vehicles, skis, ski boots and ski equipment (collectively, the "Equipment") may be left on or placed on any Common Element.

15.24 **Barbecue Grills.** No grills of any kind may be on balconies or any of the Common Elements. The seven (7) second floor units in Building D have exterior ground level patios. Subject to prior Board approval, such units may place a propane gas barbecue or grill on such exterior patio. No charcoal grills are permitted.

15.25 **Prohibition on Liquor and/or Marijuana Stores.** Only one liquor store may be located on the Property. Any liquor store located on the Property must be approved in writing by the Declarant. Only one store that sells, grows, or manufacture marijuanas, cannabis and/or products derived therefrom for the purposes of medicinal or recreational use may be located on the Property. The provisions of this paragraph 15.25 shall not ever be amended without the written consent of Declarant and without regard to whether the Declarant owns any portion of the Property at the time of the amendment.

15.26 **Use of Limited Common Element Patios.** Seven of the second floor units in building D have exterior patios or yard areas which are Limited Common Elements. Such areas may be used for outside storage, provided that such storage areas are adequately screened with fencing or landscaping as determined by the Board. All risk of loss for items stored in these areas is assumed by such Owners.

15.27 **No Smoking.** No smoking will be allowed in the interior of Units. Any exterior smoking shall be at least five (5) feet from each Unit entrance or more if required by applicable laws.

15.28 **Enforcement; Modifications.** The Board, acting on behalf of the Association, may take such action as it deems advisable to enforce these Covenants as provided in this Declaration. In addition, the Board and the Managing Agent shall have a right of entry on any part of the Project for the purposes of enforcing this Section, and any costs incurred by the Managing Agent acting on behalf of the Association or the Board in connection with such

enforcement which remains unpaid 30 days after the Board has given notice of the cost to the Owner and otherwise complied with the Act shall be subject to interest at the post-cure default rate described above from the date of the advance by the Managing Agent acting on behalf of the Association or the Board through the date of payment in full by the Owner, and shall be treated as a Default Assessment enforceable as provided in this Declaration. The Board may delegate to the Managing Agent appropriate authority from time to time to act on behalf of the Board and to reasonably take such enforcement and other actions as the Board might otherwise take under the circumstances. The Covenants contained herein may be modified and supplemented as provided in the Rules and Regulations adopted by the Board from time to time.

16. **Owner Acknowledgment and Waivers.**

16.1 **Security.** THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROJECT, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION IS NOT AN INSURER AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION MAKES NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

16.2 **No View Easement.** There is no easement or other right, express or implied, for the benefit of the Unit or any Owner for light, view or air created by this Declaration or as a result of the Owner owning the Unit.

16.3 **Mountain Conditions.** Each Owner acknowledges that ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to, (i) dripping water onto decks and porches for snowmelt; (ii) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow and ice to prevent leaking or damage to these structures; (iii) the need to maintain the internal temperature of the Unit at a minimum of 55 degrees in order to prevent broken pipes; and (iv) other inconveniences arising from the sometimes severe winter conditions in the Rocky Mountains. As such, each Owner agrees to abide by the Covenants insofar as maintenance, repair, replacement and operation of its Unit(s).

16.4 **Sound Transmission.** Sound and impact noise transmission in a building(s) such as the Project is hard to control, and noises from adjoining or nearby structures and surrounding development and/or mechanical equipment can and will be heard in the Units. The Association is not responsible in any way for sound or impact noise transmission.

17. **Damage or Destruction; Casualty.**

17.1 **Description.** If any Unit or Common Element is damaged or destroyed by fire or other casualty (a "*Casualty*"), this Article shall apply. Promptly after any Casualty occurs, the Board will obtain at least two bids from licensed contractors for the full and lawful repair and restoration of all damaged Units and Common Elements. Upon receiving the bids and after sufficient discussions with the adjuster for the Association's insurer, the Board will notify the Owners of the amounts of the bids, the probable amount of insurance proceeds and other funds (such as funds in the Reserve Account) that are available for restoration, and whether, based on that information, the Board believes a restoration deficit will result if the Owners elect to fully restore all damaged Units and Common Elements. In the notice, the Board will also call a meeting of the Owners to vote on the question of whether to fully restore all damaged Units and Common Elements. The Association will fully restore the damaged Units and Common Elements to their condition prior to the Casualty and as required by law, and the Board will promptly enter into construction contracts and proceed with the restoration work, unless at the meeting:

(a) The Project is terminated pursuant to Article 19 below; or

(b) At least 67% of all Owners, including the Owner of any Unit whose boundaries will be changed or the use or enjoyment of which will be prevented or materially impaired as a result of not fully restoring all damaged Units and Common Elements, vote (i) not to fully restore all damaged Units and Common Elements and not to terminate the Project; (ii) to approve plans and specifications for a limited restoration that will restore the damaged area to a condition compatible with the remainder of the Project and that may include, without limitation, demolition, restoration or alteration of all or part of any damaged Unit or Common Element; and (iii) to adopt, if applicable, an amendment to this Declaration (including the Map) to reflect the conversion of all or part of one or more damaged Unit(s) to Common Elements or of all or part of one or more damaged Common Element(s) to one or more Unit(s) and the corresponding reallocation of the Allocated Interests allocated to the Units pursuant to this Declaration (which reallocation will be based on the same formula set forth in this Declaration for determining the Allocated Interests).

If the Project is terminated, the Association will perform limited restoration of the Units and Common Elements as necessary to return them to a safe, lawful and saleable condition. If the Owners vote not to fully restore all damaged Units and Common Elements and not to terminate the Project, the Association will perform the limited restoration and record the amendment to this Declaration, if any, approved by the requisite number of Owners pursuant to Section 17.1(b) above. If, however, the Owners elect to fully restore all damaged Units and Common Elements, the Board will assess a Special Assessment in accordance with this Declaration to the extent necessary to cover any restoration deficit.

17.2 **Disposition of Insurance Proceeds.** All proceeds of property insurance received by or disbursed to the Association in connection with a Casualty will be applied first to the full or

limited restoration of the damaged Units and Common Elements, as provided in Section 17.3 and then, if any insurance proceeds remain after the full or limited restoration, the excess proceeds will be paid to the Owners, subject to the rights of their First Mortgagees, as follows:

(a) if the Owners elect not to fully restore all damaged Units and Common Elements and to terminate the Project pursuant to Article 19 below, then each Owner will be paid its Unit's Termination Allocation of the excess proceeds pursuant to Section 19.3;

(b) if the Owners elect not to fully restore all damaged Units and Common Elements and not to terminate the Project, then any of such excess proceeds attributable to any damaged Units that are not restored or to any Common Elements that are not restored and were necessary for the use and enjoyment of any Units that are not fully restored will be paid to the Owners of these Units to the extent of the insurance coverage allocated to those Units or Common Elements, and each Owner will be paid its Unit's Allocated Interest of the remainder of the excess proceeds, if any; or

(c) if the Owners elect to fully restore all damaged Units and Common Elements, then each Owner will be paid its Unit's Allocated Interest of the excess proceeds.

17.3 Manner of Restoration. The restoration of any Unit or Common Element under this Article is subject to the following requirements:

(a) Plans. Except in the case of a limited restoration in accordance with Section 17(b) above, the restoration will be completed in accordance with the as-built plans and specifications of the Unit or Common Element immediately prior to the damage.

(b) Requirements. The Association will:

(i) obtain all necessary permits and governmental authorizations for the restoration;

(ii) comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(iii) perform the restoration in a diligent, good and workmanlike manner, free and clear of all mechanics' and materialmen's liens and other claims;

(iv) during the construction process, to the extent required by good construction practices, keep the area affected thereby in a safe, neat and clean condition;

(v) minimize any impact from the construction process on other Units or Common Elements or other portions of the Project or the Property; and

(vi) perform any restoration or construction work, or cause such work to be performed, in a manner that maintains harmonious labor relations and does not interfere

unreasonably with or delay the work of any other contractors then working anywhere on the Project or the Property.

(c) Coordination by Association. The Association has full authority and responsibility to coordinate the manner of completion and scheduling of any restoration under this Article to ensure the completion of the restoration in an efficient manner. Each Owner will cooperate and cause its contractors and agents to cooperate in the Association's coordination of any restoration. As used in this Article, a "restoration" will include any repair, replacement, restoration, reconstruction, construction or demolition required as a result of any damage or destruction.

17.4 No Abatement. Each Unit will continue to be subject to Assessments following any damage to or destruction of any portion of the Project, without abatement or modification as a result of the damage or destruction.

18: Condemnation.

18.1 Taking of Condominiums. If all or a part of any Unit or the use of, but not title to, any Limited Common Element allocated to the Unit, is taken by the exercise of the power of eminent domain or is conveyed in lieu of such exercise (collectively, "**Taking**"), the Owner of the Unit is solely responsible for negotiating with the condemning authority concerning the award for the Taking and may receive the award after the liens of all Mortgagees on the affected Unit or portion of it are satisfied or otherwise discharged. If only part of a Unit is acquired by a Taking, the Owner of the Unit is responsible for restoring the Unit as necessary to return the Unit to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Units or Common Elements or detract from the general character or appearance of the Project. The plans and specifications for the restoration are subject to the Board's prior approval. The restoration will be completed in accordance with the approved plans and specifications and the provisions set forth in the Casualty Section above, as if the Owner of the Unit to be restored were the Association. If a condemning authority acquires by a Taking all or a part of one or more Units in such a manner that such Unit(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration as provided herein, revising the Allocated Interest of each of the remaining Units, and, if necessary, the allocation of any Limited Common Element previously allocated to the Unit(s) that is or are no longer subject to this Declaration.

18.2 Taking of Common Elements. A "**Common Element Taking**" means any Taking by which a condemning authority acquires title to any Common Element. The Board is solely responsible for negotiating, and may negotiate with the condemning authority on behalf of all Owners concerning, the amount of the award for any Common Element Taking, and the Board's acceptance of an award is binding on all Owners. If a Common Element Taking occurs, the Association is responsible for restoring the remaining Common Elements as necessary to return them to a safe and lawful condition that does not adversely affect the use or enjoyment of the Units or other Common Elements or detract from the general character or appearance of the Project. If the net award (*i.e.*, net of costs of collection) received by the Association from any

Common Element Taking exceeds the amount actually incurred by it in connection with any required restoration of the Common Elements, the Association will pay or credit each Owner with its Unit's Termination Allocation of the excess condemnation award, as if the award resulted from a sale of the Project pursuant to the Termination Article set forth below; *provided, however*, that the valuation date used to determine the fair market value of each Unit pursuant to the Termination Article below for purposes of determining the Termination Allocations will be the date immediately preceding the earlier of the date that title or the date that possession is transferred to the condemning authority in connection with the Common Element Taking. If the net amount of the award so received is insufficient to effect such restoration, the Board may assess a Special Assessment to cover the restoration deficit.

19. **Termination; Obsolescence.**

19.1 **Termination Agreement.** The Project may be terminated only pursuant to a written agreement to terminate executed and acknowledged (or ratified and acknowledged in writing) by the Owners of Units to which 67% of the votes in the Association are allocated (a "*Termination Agreement*"). A Termination Agreement is effective when (a) the requisite number of Owners have executed and acknowledged it or a ratification of it, and (b) the Termination Agreement and all ratifications, if any, are recorded. A Termination Agreement will state a date after which it is automatically void unless it is effective by that date. A Termination Agreement will also state that, when it becomes effective, the Project is deemed terminated and the Association will sell the Project, including all Units and Common Elements, on behalf of all Owners, upon terms and conditions of sale approved by the Board, *provided* that those terms will be at least as favorable as the minimum terms set forth in the Termination Agreement.

19.2 **Sale of Unit Component.** When a Termination Agreement becomes effective, the Project is deemed terminated, the Association will sell the entire Project (*i.e.*, all Units and all Common Elements) for the benefit of the Owners, and the resulting sales proceeds will be allocated in accordance with this Article. Upon approval of a Termination Agreement, (a) each Owner (including dissenting Owners) is deemed to grant the Association, acting through its officers under the authority of the Board, an irrevocable power of attorney, coupled with an interest, to sell the Project for the benefit of the Owners, and (b) accordingly, the Association has full and complete authority, right and power to make, execute and deliver any contract, deed or other instrument necessary and appropriate to accomplish that purpose. Notwithstanding the termination of the Project, the Association (and its officers and the Board) will continue to exist and hold office, respectively, with all of its and their powers specified in this Declaration and the Bylaws (including, without limitation, the power to impose Assessments) until the Project is sold and all proceeds (*i.e.*, sales proceeds and, if applicable, insurance proceeds or condemnation proceeds) are distributed. Unless otherwise specified in the Termination Agreement or otherwise precluded by law, until a sale of the Project is concluded, each Owner has an exclusive right to occupy its former Unit and remains liable for all Assessments and other obligations imposed on the Owner pursuant to this Declaration.

19.3 **Proceeds.** The Association will pay to each Owner its Unit's Termination Allocation of the net proceeds of the sale of the Project following termination of the Project (together with any insurance proceeds or condemnation proceeds). However, no payment will be made to an Owner until all liens on its Condominium are paid out of the Owner's share of the proceeds, in the order of priority of such liens. A Unit's "***Termination Allocation***" means the percentage obtained by dividing the fair market value of the Condominium of which the Unit is a part by the total fair market values of all of the Condominiums. The valuation date used in determining the fair market value of each Condominium is the date immediately prior to the date the Termination Agreement becomes effective (or, if the termination is attributable to a Casualty where the Owners elect to terminate the Project, the valuation date is the date immediately prior to the date on which the Casualty occurred). The fair market value of each Condominium as of the appropriate valuation date will be determined by one or more independent appraisers selected by the Board. The Association will distribute to the Owners the values determined by the independent appraisers. Those values are final and binding on all Owners for purposes of establishing the Termination Allocations unless within 30 days after distribution they are disapproved in writing by the Owners of Units to which at least 25% of the votes in the Association are allocated.

20. **Mortgagee's Rights.** The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Section apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

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

20.2 **Right to Pay Taxes and Charges.** Mortgagees who hold Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

20.3 **Audited Financial Statement.** Upon written request from any Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee.

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

- 20.4.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in this Declaration;
- 20.4.2 Any proposed termination of the common interest community;
- 20.4.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a Mortgage held, insured or guaranteed by the Mortgagee or any other person;
- 20.4.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;
- 20.4.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

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

21. **Enforcement of Covenants.**

21.1 **Violations Deemed a Nuisance.** Every violation of this Declaration or any other of the Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of these covenants will be available.

21.2 **Failure to Comply.** Failure to comply with the Association Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

21.3 **Who May Enforce.** Any action to enforce the Association Documents may be

brought by the Association or the Board in the name of the Association on behalf of the Owners, or any aggrieved Owners. Such an action may be brought by the Board, the Association or any Owner.

21.4 **Remedies.** In addition to the remedies set forth in this Section, any violation of the Association Documents shall give to the Board or to the Association, through the Managing Agent or other representative, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and meaning of the Association Documents. If the offense occurs in any easement, walkway, Common Elements or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

21.5 **Nonexclusive Remedies.** All the remedies set forth herein are cumulative and not exclusive.

21.6 **No Waiver.** The failure of the Association, the Board, or any aggrieved Owner to enforce the Association Documents will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Association Documents at any future time.

21.7 **No Liability.** No member of the Board or any Owner will be liable to any other Owner for the failure to enforce any of the Association Documents at any time.

21.8 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the Association Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Association Documents or the restraint of violations of the Association Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees) as may be incurred, or if suit is brought, as may be determined by the court.

22. **Resolution of Disputes.** If any dispute arises between Members or between Members and the Association, or if any question arises relating to the interpretation, performance or nonperformance, violation, or enforcement of the Association Documents the Board will encourage the use of alternative dispute resolution procedures as provided in Article 24 below, but the Association will not be deemed to have compromised or waived its right to seek judicial relief under any circumstances.

23. **Duration of Covenants and Amendment.**

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

23.2 **Amendment.** This Declaration, or any provision of it, may be amended at any

time by Owners holding at least sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment.

23.3 **Revocation.** This Declaration shall not be revoked nor shall the Project created hereby be terminated (except as otherwise provided herein with respect to a total destruction; Termination; or Obsolescence).

24. **Enforcement; Dispute Resolution.**

- (a) This Declaration and the Bylaws constitute a general scheme benefiting each Unit and the Project as a whole and may be enforced by the Association or an aggrieved Owner. A violation of any of the provisions of this Declaration causes irreparable damage to the Project. Therefore, subject to the terms and conditions of this Section, and except as otherwise expressly provided elsewhere in this Declaration, the Association and any aggrieved Owner may prosecute a proceeding at law or in equity against any Person violating or attempting to violate the provisions of this Declaration or the Bylaws, including, without limitation, an action for a temporary restraining order, preliminary injunction and permanent injunction.
- (b) The Association may recover from any Person violating or attempting to violate any provision of this Declaration or the Bylaws reasonable attorneys' fees and other legal costs incurred by the Association in successfully enforcing the provision, regardless of whether suit is initiated. If the Person is an Owner, the amount of the fees and costs constitute a lien against the Owner's Unit which may be foreclosed in accordance with Article 14. In addition, any noncompliance by an Owner with the Association Documents, shall enable the Association to (i) temporarily suspend the Owner's right to use or enjoy any of the Common Elements and/or Amenities; (ii) impose monetary penalties; and (iii) impose other appropriate measures; provided, however, that before imposing any of those measures (other than late charges, interest and reasonable collection costs relating to delinquent payments), the Board will promulgate Rules and Regulations relating to those measures including provisions affording a defaulting Owner notice of the claimed default and an opportunity to be heard by the Board prior to the imposition of the disciplinary measure.
- (c) Before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Declaration, the Owner will first give written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages for damage to the Common Elements resulting from the violation, or may

otherwise enforce the provisions of this Declaration. The aggrieved Owner may exercise any of its rights under this Section if (i) the violation or attempted violation results or would result in direct and immediate physical damage to the Owner's Unit, or (ii) the Association fails to enforce or cause enforcement of the violated provisions of this Declaration within 60 days after the Board receives the Owner's notice.

25. **General Provisions.**

25.1 **Precedence of Act.** Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

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

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

25.4 **Construction.** In interpreting words in this Declaration, unless the context will otherwise provide or require, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

25.5 **Headings.** The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

25.6 **Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

25.7 **Limitation of Liability.** Neither the Association nor any officer or member of the Board will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles and Bylaws.

25.8 **Counterparts.** This Declaration and the required approvals and joinders to it may be executed in two or more counterparts which when taken together shall evidence the agreement of the Association, the Owners and all other parties approving or joining in this Declaration.

25.9 **Provisions Run with Property.** Each Unit, Owner, permittee and Mortgagee are subject to all provisions of this Declaration and the provisions are covenants running with the land or equitable servitudes, as the case may be, and bind every Persons having any interest in the Project and inure to the benefit of every Owner.

25.10 **Association as Attorney-in-Fact.** Except as otherwise provided herein, this Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the Property and the Project in the event of its destruction, damage, obsolescence, or condemnation, including the repair, replacement and improvement of any Units, Common Elements or other portions thereof which may have been destroyed, damaged, condemned, or become obsolete. Title to any Unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the declarant or from any 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 and Property upon its damage, destruction, obsolescence, or condemnation as is hereinafter provided. As attorney-in-fact, the Association, by its president and 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 instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted.

SIGNATURE ON FOLLOWING PAGE

This Declaration is executed as of the Effective Date.

GLENWOOD COMMERCIAL CENTER
CONDOMINIUM ASSOCIATION, INC., a
Colorado nonprofit corporation

By: Declarant

RAD Development-Glenwood, a Colorado limited
liability company

By: Rakesh Mathur
Print Name: RAKESH MATHUR
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Acknowledged, subscribed and sworn to before me on this ___ day of _____,
2016, by _____, as _____ of RAD Development-Glenwood, a
Colorado limited liability company.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

See Attached Jurat - 68

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Mateo

Subscribed and sworn to (or affirmed) before me on this 9th
day of March, 2016, by _____
Rakesh Mathur

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



(Seal)

Signature Lisa Rae Janny

EXHIBIT A
(Legal Description)

PARCEL A:

A TRACT OF LAND SITUATED IN THE NE1/4SW1/4 SECTION 22, TOWNSHIP 6 SOUTH, RANGE 89 WEST OF THE 6TH PRINCIPAL MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NE1/4SW1/4 WHENCE THE NORTHWEST CORNER OF SAID NE1/4SW1/4 BEARS N 87 DEGREES 05' W 397.33 FEET SAID POINT ALSO BEING THE NORTHWEST CORNER OF THE AMENDED HUGHES SUBDIVISION RECORDED AS REC. #419357 IN THE RECORDS OF THE GARFIELD COUNTY CLERKS OFFICE, THENCE ALONG THE WESTERLY LINE OF SAID SUBDIVISION, S 15 DEGREES 17' W 330.31 FEET TO A POINT ON THE WESTERLY LINE OF SAID SUBDIVISION, PARCEL B; THENCE LEAVING SAID WESTERLY LINE S 63 DEGREES 39'19" W 68.06 FEET; THENCE S 26 DEGREES 20'41" E 76.59 FEET TO A POINT SAID WESTERLY LINE; THENCE S 15 DEGREES 17'00" W 207.59 FEET TO A POINT ON THE NORTHERLY LINE OF THE RIGHT OF WAY OF COLORADO STATE HIGHWAY 82; THENCE N 66 DEGREES 05' W 31.36 FEET ALONG THE NORTH LINE OF SAID RIGHT OF WAY; THENCE N 00 DEGREES 09' W 615.15 FEET, MORE OR LESS TO THE NORTH LINE OF SAID NE1/4SW1/4; THENCE S 87 DEGREES 05' E 199.33 FEET ALONG THE NORTH LINE OF SAID NE1/4SW1/4 TO THE POINT OF BEGINNING.

PARCEL B:

A TRACT OF LAND SITUATED IN THE NE1/4SW1/4 OF SECTION 22 TOWNSHIP 6 SOUTH, RANGE 89 WEST OF THE 6TH PRINCIPAL MERIDIAN, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NE1/4SW1/4,
THENCE S 87 DEGREES 05' E 198.00 FEET;
THENCE S 00 DEGREES 09' E 615.15 FEET MORE OR LESS TO THE NORTH LINE OF COLORADO STATE HIGHWAY 82 RIGHT OF WAY;
THENCE N 66 DEGREES 05' W 12.54 FEET ALONG SAID RIGHT OF WAY;
THENCE CONTINUING ALONG SAID RIGHT OF WAY N 62 DEGREES 50' W 184.90 FEET;
THENCE CONTINUING ALONG SAID RIGHT OF WAY N 60 DEGREES 18'30" W 25.35 FEET TO THE WEST LINE OF SAID NE1/4SW1/4;
THENCE ALONG SAID WEST LINE N 00 DEGREES 09' W 96.18 FEET TO A POINT ON AN EXISTING FENCE LINE;
THENCE ALONG SAID FENCE LINE THE FOLLOWING FIVE (5) COURSES:
1. S 88 DEGREES 31'43" E A DISTANCE OF 4.29 FEET;
2. N 01 DEGREES 24'35" W A DISTANCE OF 157.01 FEET;
3. N 05 DEGREES 14'22" W A DISTANCE OF 148.97 FEET;
4. N 00 DEGREES 04'18" E A DISTANCE OF 22.40 FEET;
5. N 06 DEGREES 54'13" E A DISTANCE OF 100.10 FEET TO THE POINT OF BEGINNING.

COUNTY OF GARFIELD
STATE OF COLORADO

EXHIBIT A-1

(EXCEPTIONS)
(ATTACHED)

(Exceptions)

Order Number: ABS63009921-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
8. EXISTING LEASES AND TENANCIES.
9. RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES AS RESERVED IN UNITED STATES PATENT RECORDED DECEMBER 30, 1942, IN BOOK 73 AT PAGE 216.
10. TERMS, CONDITIONS AND PROVISIONS OF PERMANENT EASEMENT RECORDED JUNE 06, 1963 IN BOOK 349 AT PAGE 562.
11. TERMS, CONDITIONS AND PROVISIONS OF GRANT OF EASEMENT RECORDED MARCH 22, 1995 IN BOOK 934 AT PAGE 927.
12. TERMS, CONDITIONS AND PROVISIONS OF PUBLIC UTILITY EASEMENT DEED RECORDED OCTOBER 23, 2000 IN BOOK 1213 AT PAGE 683.
13. TERMS, CONDITIONS AND PROVISIONS OF PUBLIC UTILITY EASEMENT DEED RECORDED OCTOBER 23, 2000 IN BOOK 1213 AT PAGE 685.
14. RESERVATION OF ALL EXISTING EASEMENTS AS RESERVED BY GRANTOR IN DEED RECORDED FEBRUARY 2, 2001 IN BOOK 1230 AT PAGE 147.
15. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN RIGHT-OF-WAY GRANT RECORDED OCTOBER 17, 2005 IN BOOK 1736 AT PAGE 502.

(Exceptions)

Order Number: ABS63009921-2

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

16. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN AND IMPOSED BY RESOLUTION # 2008-111 CONCERNED WITH THE APPROVAL OF A SPECIAL USE PERMIT FOR A COMMUNICATIONS FACILITY FOR VERIZON WIRELESS ON PROPERTY OWNED BY GLENWOOD COMMERCIAL, LLC RECORDED OCTOBER 07, 2008 UNDER RECEPTION NO. 756893.
17. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN RESOLUTION #2009-70 CONCERNED WITH THE APPROVAL OF A PRELIMINARY PLAN APPLICATION FOR GLENWOOD COMMERCIAL CENTER SUBDIVISION RECORDED SEPTEMBER 23, 2009 UNDER RECEPTION NO. 775520.
18. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN MEMORANDUM OF LEASE RECORDED JANUARY 24, 2012 UNDER RECEPTION NO. 813655.
19. DEED OF TRUST DATED OCTOBER 06, 2014 FROM RAD DEVELOPMENT- GLENWOOD, LLC TO THE PUBLIC TRUSTEE OF GARFIELD COUNTY FOR THE USE OF CENTENNIAL BANK TO SECURE THE SUM OF \$3,000,000.00, AND ANY OTHER AMOUNTS PAYABLE UNDER THE TERMS THEREOF, RECORDED OCTOBER 20, 2014, UNDER RECEPTION NO. 855031.

SAID DEED OF TRUST WAS FURTHER SECURED IN ASSIGNMENT OF RENTS RECORDED OCTOBER 20, 2014, UNDER RECEPTION NO. 855032.
20. TERMS, CONDITIONS AND PROVISIONS OF PRE-ANNEXATION AGREEMENT TO PROVIDE WATER AND SERVICE AGREEMENT RECORDED JUNE 15, 2015 AT RECEPTION NO. 864020.