



**DECLARATION
OF CONDOMINIUM FOR
THE PINNACLE AT CITY PARK SOUTH
A Residential Condominium**

Dated September 14, 2007

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**DECLARATION OF CONDOMINIUM FOR
THE PINNACLE AT CITY PARK SOUTH
A Residential Condominium**

THIS DECLARATION OF CONDOMINIUM FOR THE PINNACLE AT CITY PARK SOUTH (the "Declaration") is made as of September 14, 2007 by OPUS NWR DEVELOPMENT, L.L.C., a Delaware limited liability company authorized to do business in Colorado (the "Declarant").

RECITALS

A. Declarant is owner of that certain real property located in the City and County of Denver, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. Declarant desires to create a condominium common interest community on the Property, the name of which is The Pinnacle at City Park South pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute §38-33.3-101 *et seq.*, as it may be amended from time to time (the "Act"). In the event the Act is repealed, the Act as it exists on the date this Declaration is recorded shall remain applicable.

**ARTICLE 1
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act, in order to create a condominium common interest community.

**ARTICLE 2
DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

Section 2.1 "Agency" means any agency or corporation such as the U.S. Department of Housing and Urban Development ("HUD"), U.S. Veterans' Administration ("VA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") that purchases or insures residential mortgages.

Section 2.2 "Allocated Interests" means the interest in the Common Expenses, Common Elements and votes in the Association allocated to each Dwelling Unit as set forth on the attached Exhibit B. The Allocated Interests for each Dwelling Unit are based on the interior floor area that each Dwelling Unit bears to the interior floor area of all Dwelling Units, and the square footage and Allocated Interests of each Dwelling Unit as shown on Exhibit B shall be conclusively determinative thereof. The Allocated Interests shall be reallocated among all

Dwelling Units when and if additional Dwelling Units are created in the Project. Each Dwelling Unit is entitled to one (1) weighted vote in the Association for matters in which Owner consent is required, which vote shall be weighted in accordance with the Allocated Interests of the Dwelling Unit as shown on Exhibit B.

Section 2.3 "Articles" means the Articles of Incorporation for The Pinnacle at City Park South Homeowners Association, Inc., a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.4 "Assessments" means the Annual Assessments, Special Assessments and Default Assessments levied pursuant to Article 11 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.5 "Association" means The Pinnacle at City Park South Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.6 "Association Documents" means this Declaration, the Articles, the Bylaws, the Map, any Alteration Guidelines (as defined in Article 16), and any budget, procedures, rules, regulations or policies adopted under such documents by the Association, as amended from time to time.

Section 2.7 "Board" means the governing body of the Association.

Section 2.8 "Building" means each building constructed on the Property containing the Dwelling Units, including, without limitation, Tower 1 and the Park Homes Building, as shown on the Map. The Buildings are further described in Section 3.5 below.

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

Section 2.10 "Ceiling" means the interior surface of the ceiling of a Dwelling Unit.

Section 2.11 "City" means the City and County of Denver, Colorado.

Section 2.12 "Clerk and Recorder" means the office of the Clerk and Recorder in the City and County of Denver, Colorado.

Section 2.13 "Common Elements" means all portions of the Project except the Dwelling Units. The Common Elements are owned in common by the Owners in undivided interests according to the Allocated Interests set forth pursuant to Section 2.2 above and consist of General Common Elements and Limited Common Elements.

2.13.1 "General Common Elements" means all tangible physical properties of this Project except the Limited Common Elements and the Dwelling Units.

2.13.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, on the Map, in a recorded certificate or deed executed by Declarant pursuant to Article 15, or by authorized action of the Association, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one (1) but fewer than all Owners. Notwithstanding the foregoing, an LCE Parking Space and an LCE Storage Space (each as defined below) may be allocated to a Unit: (a) by designation on the Map or any Supplemental Map; (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit; and/or (c) as otherwise provided in accordance with Section 15.2 below. In the event of an inconsistency, the terms of the conveyance deed shall control.

Section 2.14 "Common Expenses" means: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association; (b) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (c) insurance premiums for the insurance carried under Article 10; and (d) all expenses lawfully determined to be common expenses by the Board.

Section 2.15 "County" means the City and County of Denver, Colorado.

Section 2.16 "Declarant" means OPUS NWR DEVELOPMENT, L.L.C., a Delaware limited liability company authorized to do business in Colorado, and any of its successors or assigns who have received an express assignment as Successor Declarant of all or any portion of the Declarant's rights pursuant to the Act.

Section 2.17 "Declarant Control Period" shall have the meaning assigned in Section 5.5.

Section 2.18 "Declaration" means this Declaration and the Map, and amendments and supplements to the foregoing.

Section 2.19 "Eligible Mortgagee" means a holder, insurer or guarantor of a First Mortgage who has delivered a written request to the Association containing its name, address, the legal description and address of the Dwelling Unit encumbered by its First Mortgage, requesting that the Association notify them on any proposed action requiring the consent of the specified percentage of Eligible Mortgagees.

Section 2.20 "Exterior Walls" means the walls bounding a Dwelling Unit on all sides.

Section 2.21 "First Mortgage" means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.22 "First Mortgagee" means any Person named as a Mortgagee in any First Mortgage, or any successor to the interest of any such Person under such Mortgage.

Section 2.23 "LCE Parking Space" means a parking space assigned on the Map or any Supplemental Map, or that has been otherwise allocated, for exclusive use to one (1) or more, but fewer than all, of the Units in the Project. Until allocated as a Limited Common Element, as

provided on the Map, in this Declaration or pursuant to the Act, all parking spaces on the Map shall be General Common Elements. A parking space can be converted from a General Common Element into an LCE Parking Space and allocated to a Unit(s): (a) by designation on the Map or any Supplemental Map; (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit(s); and/or (c) as otherwise provided in accordance with Section 15.2 below.

Section 2.24 "LCE Storage Space" means a storage space assigned on the Map or on any Supplemental Map, or that has been otherwise allocated, for exclusive use to one (1) or more, but fewer than all, of the Units in the Project. Until allocated as a Limited Common Element, as provided on the Map, in this Declaration or pursuant to the Act, all storage spaces on the Map shall be General Common Elements. A storage space can be converted from a General Common Element into a LCE Storage Space and allocated to a Unit(s): (a) by designation on the Map or any Supplemental Map; (b) pursuant to a conveyance deed from Declarant to a buyer of the Unit(s); and/or (c) as otherwise provided in accordance with Section 15.2 below.

Section 2.25 "Manager" means a Person engaged by the Association to perform certain duties, powers or functions of the Association, to the extent the Board may authorize from time to time.

Section 2.26 "Map" means the condominium map of the Project prepared in accordance with the Act and recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration, and any supplements and amendments thereto.

Section 2.27 "Member" means every Person that holds membership in the Association by virtue of ownership of a Unit.

Section 2.28 "Mortgage" means any mortgage, deed of trust or other document conveying any Dwelling Unit or interest therein to a Mortgagee, but only as security for payment of a debt or obligation and not intended to initially convey fee simple title thereof.

Section 2.29 "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.

Section 2.30 "Occupant" means any Person or Persons, other than an Owner, in lawful possession of or residing in a Dwelling Unit.

Section 2.31 "Owner" means the owner of record, whether one (1) or more Persons, of fee simple title to any Dwelling Unit, including Declarant so long as it is the owner of record of a Dwelling Unit, and "Owner" also includes the purchaser under a contract for deed covering a Dwelling Unit with a current right of possession and interest in the Dwelling Unit.

Section 2.32 "Owner's Agent" means members of the Owner's family, Occupant of the Owner's Unit, or the Owner's agent, employee, invitee or licensee.

Section 2.33 "Park Homes Building" means the Building, as shown on the Map, containing the following Dwelling Units: Unit AL-1; Unit AL-2; Unit AL-3; Unit AL-4; Unit BL-1; Unit CL-1;

Unit CL-2; Unit CL-3; Unit CL-4; Unit AU-1; Unit AU-2; Unit AU-3; Unit AU-4; Unit BU-1; Unit CU-1; Unit CU-2; Unit CU-3; and Unit CU-4.

Section 2.34 "Parking Garage" means the parking garage constructed on the Property containing parking spaces, including LCE Parking Spaces.

Section 2.35 "Person(s)" means any natural person or any legal association of persons including, but not limited to, partnerships, limited partnerships, corporations, limited liability entities or associations recognized under Colorado law.

Section 2.36 "Project" means the condominium common interest community created by this Declaration and as shown on the Map consisting of the Property, the Dwelling Units and the Common Elements.

Section 2.37 "Successor Declarant" means: (a) any Person to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder; and (b) any Mortgagee holding a Mortgage encumbering that portion of the Project owned by Declarant at such time as said Mortgagee shall gain title to said portion of the Project through foreclosure or deed in lieu of foreclosure.

Section 2.38 "Supplemental Declaration" means an instrument that amends this Declaration in accordance with the amendment provisions herein or under the Act if not otherwise provided herein.

Section 2.39 "Supplemental Map" means a supplemental Map of the Project that depicts any change in the Project through a Supplemental Declaration, or which otherwise corrects or amends the Map in accordance with the Act.

Section 2.40 "Tower 1" means the Building, as shown on the Map, containing the Dwelling Units other than those Dwelling Units contained within the Park Homes Building.

Section 2.41 "Unit" and "Dwelling Unit" mean each and every Unit identified on the Map. The Units are intended for residential use. Each Unit consists of, upon the issuance of a certificate of occupancy therefore by the appropriate governmental entity, one (1) individual airspace unit and the interior surface of the Exterior Walls. The lower boundary for each Dwelling Unit is the surface of the floor extending to the inside of the Exterior Walls of the Dwelling Unit. The upper Unit boundary for each Unit is the interior surface of the Ceiling of the Dwelling Unit. Each Dwelling Unit also includes the airspace contained within the Exterior Walls, windows, doors and unfinished surfaces of Exterior Walls, as shown on the Map. The Dwelling Units are further described in Section 3.5 hereof.

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

ARTICLE 3
NAME, DIVISION INTO DWELLING UNITS; DESCRIPTION

Section 3.1 Name.

The name of the Project is The Pinnacle at City Park South. The Project is a condominium pursuant to the Act.

Section 3.2 Association.

The name of the Association is The Pinnacle at City Park South Homeowners Association, Inc. The Association has been incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units.

The Project shall initially consist of the number of Dwelling Units set forth on **Exhibit B**. In accordance with Declarant's right to expand this condominium regime, the Project may consist of a maximum of three hundred (300) Dwelling Units. Each Dwelling Unit shall consist of the fee simple ownership interest in the Dwelling Unit as defined in this Declaration and an undivided fee simple ownership interest in the Common Elements as defined in this Declaration.

Section 3.4 Identification of Units.

The identification number and street address of each Dwelling Unit is shown on the Map.

Section 3.5 Description of Units; Buildings; Inseparability; Transfer.

3.5.1 *Description.* The provisions of §38-33.3-202 of the Act, entitled "Unit Boundaries", are generally applicable to the Dwelling Units. The Unit Boundaries are generally shown on the Map, and are generally enclosed and bounded by the following boundaries:

3.5.1 (a) All lath, furring, wallboard, plasterboard, plaster, paneling, floor and ceiling tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Dwelling Unit, and all other portions of the walls, floors, or ceilings are a part of the Common Elements.

3.5.1 (b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture which lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a General Common Element, except as otherwise set forth on the Map.

3.5.1 (c) Subject to the provisions of Section 3.5.1 (b) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

3.5.1 (d) Any shutters, awnings, window boxes, doorsteps, stoops, balconies, decks, patios, terraces and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit, except as otherwise set forth on the Map.

3.5.1 (e) The lower boundary for each Dwelling Unit is the exterior surface of the floor of the lowest level of the Dwelling Unit. The upper boundary for each Dwelling Unit is the interior surface of the Ceiling of the highest level of each Dwelling Unit.

3.5.2 *Buildings.* All portions of Tower 1, excluding the Dwelling Units and the Limited Common Elements allocated (on the Map or pursuant to this Declaration) to fewer than all the Dwelling Units in Tower 1, are General Common Elements, except as otherwise set forth on the Map. All portions of the Park Homes Building, excluding the Dwelling Units and the Limited Common Elements allocated (on the Map or pursuant to this Declaration) to fewer than all the Dwelling Units in the Park Homes Building, are Limited Common Elements to all Units within the Park Homes Building, except as otherwise set forth on the Map.

3.5.3 *Inseparability.* Each Unit as defined above and the appurtenant interest in the Common Elements shall comprise one (1) Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as one (1) Unit. Any attempted transfer of the appurtenant interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

3.5.4 *Transfer.* Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Dwelling Unit may describe it as follows:

UNIT _____, THE PINNACLE AT CITY PARK SOUTH, City and County of Denver, State of Colorado, according to the Condominium Map thereof recorded on _____, 200_, at Reception No. _____, and the Condominium Declaration recorded on _____, 200_, at Reception No. _____, in the records of the Clerk and Recorder of the City and County of Denver, Colorado, as amended from time to time.

including the exclusive right to use LCE Parking Space No(s). _____, and the exclusive right to use LCE Storage Space No(s). _____, as defined by the Declaration and depicted on the Map;

3.5.5 *Contracts Entered Into Prior to Recording of Condominium Map and Declaration.* A contract or other agreement for the sale of a Unit entered into prior to the filing for record of the Map and/or this Declaration with the Clerk and Recorder may legally describe such Unit in the manner set forth in Section 3.5.4 above and may indicate that the Map and/or

this Declaration are to be recorded. Upon recordation of this Declaration, including the Map, with the Clerk and Recorder, such description shall be conclusively presumed to describe the corresponding Unit shown on the Map and such Unit shall be subject in all respects to this Declaration.

Section 3.6 Parking Garage, Parking Spaces and Storage Spaces.

The Parking Garage includes LCE Parking Spaces, as well as parking spaces that are part of the General Common Elements, subject to Declarant's right to convert parking spaces that are General Common Elements to Limited Common Elements pursuant to Section 15.2. Certain Buildings include LCE Storage Spaces, as well as storage spaces that are part of the General Common Elements, subject to Declarant's right to convert storage spaces that are General Common Elements to Limited Common Elements pursuant to Section 15.2 (collectively the LCE Parking Spaces and the LCE Storage Spaces are referred to herein as the "Spaces"). Subject to the Declarant rights set forth in Article 15 below, the following conditions and restrictions shall govern the assignment, use, and transfer of the Spaces:

3.6.1 At least one (1) parking space and one (1) storage space may be assigned to each Unit at the time of Declarant's initial conveyance of the Dwelling Unit. Owners may purchase the right to use additional parking spaces, provided that at no time may an Owner own the right to use a total of more than four (4) parking spaces in addition to the initial parking space assigned to the Unit(s) owned by the Owner. Owners may purchase the right to use additional storage spaces, provided that at no time may an Owner own the right to use a total of more than four (4) storage spaces in addition to the initial storage space assigned to the Unit(s) owned by the Owner. The transfer of any right to use a Space from one Owner to another Owner shall be effected through giving notice to the Association of the proposed transfer and compliance with the Act and any procedures adopted by the Association related to such a transfer, except for special rights reserved to Declarant under Article 15. Except where Declarant acts pursuant to Article 15, the Association shall review the proposed transfer for compliance with this Section 3.6.1 and, if the assignment complies, shall take steps reasonably required to reassign the Space to the Unit owned by the transferee. The right to use the Space shall remain with the Owner and Unit to which it is assigned, as reflected on the Map or in a conveyance deed of the Unit, until the right to use the Space is reassigned in accordance with this Section 3.6.1 or Article 15. Any Spaces that have not been converted to Limited Common Elements at the time Declarant conveys title to the last Unit that may be created hereunder may remain a General Common Element and utilized by the Association as the Board deems appropriate, subject to Declarant's reserved rights hereunder that have not expired or otherwise terminated pursuant to the terms hereof.

3.6.2 The Association shall maintain records identifying the Spaces, the Dwelling Units to which they are assigned, the names of the Owners of the Units and the dates of assignment. A written certification of the assignment shall be delivered to the Owner upon request. The Association shall not unilaterally reassign any Space assigned to a Unit, and reassignments shall be made only in accordance with Section 3.6.1 and Article 15.

3.6.3 Owners may rent or allow the use of their assigned Space only to or by other Owners, Occupants or the Association. The lease or other use right shall be in written form, and shall terminate when the lessor, lessee or other user is no longer an Owner or Occupant, regardless of the terms of any agreement to the contrary. The Owner shall give the Association advance written notice of any lease or use agreement with respect to such Owner's Space, and shall provide a copy of the lease or use agreement to the Association upon its request. The terms of this Section 3.6.3 shall not apply to Declarant.

ARTICLE 4 USE RESTRICTIONS

Section 4.1 Home Office.

Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit shall be used and occupied primarily as a residence. No industry, business, trade, occupation, or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted in any Unit except as hereinafter expressly provided. The foregoing shall not, however, be construed in such a manner as to prohibit a Unit Owner or Occupant from: (a) maintaining his personal professional library in a Unit; (b) keeping his personal business or professional records or accounts in a Unit; (c) handling his personal business or professional telephone calls or correspondence from a Unit; (d) maintaining a computer or other office equipment within the Unit; or (e) utilizing administrative help or meeting with business or professional associates, clients or customers in the Unit. Any accessory business use of a Unit, permitted by this Section 4.1, must be in compliance with all applicable statutes, ordinances and governmental regulations, must not have any adverse impact on the Association (including, but not limited to, unreasonable use of the Common Elements and insurance concerns) and must be conducted in accordance with this Declaration and the Bylaws and rules and regulations of the Association. Any such accessory business use: (a) may not involve physical alteration of the Unit visible from the exterior; (b) must not involve observable business activity such as signs, advertising displays, unusual numbers of deliveries, or unusual levels of pedestrian or vehicular traffic to and from the Unit; and (c) must not involve activity which disturbs the quiet enjoyment of the other Units by their Owners or Occupants. Subject to Declarant's reserved rights herein, the Association may establish and enforce additional reasonable rules and regulations related to the conduct of business and other activities on the Project premises, including the Units.

Section 4.2 Leasing.

Subject to the provisions of Section 15.6, an Owner shall have the right to lease his Dwelling Unit in its entirety upon such terms and conditions as the Owner may deem advisable; *provided, however*, that: (a) no Dwelling Unit may be subleased; (b) no leases shall be made for less than a three (3)-month period, except for extenuating situations approved by the Board and except for a holdover tenancy at the end of a lease term; (c) a Dwelling Unit must be leased in its entirety (not by room) unless simultaneously occupied by the Owner; (d) all leases shall be in writing and shall provide that the lease is subject to the terms of the Association Documents; (e) a Dwelling Unit may be leased only for the uses provided hereinabove; and (f)

any failure of a lessee to comply with the terms of this Declaration or any other 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. The Board may adopt further rules regarding leasing the Dwelling Units that are not inconsistent with the terms of this Declaration, including, but not limited to: (a) a requirement for a form addendum to be attached to each Dwelling Unit lease to assure that the rights and authority of the Association and Owners are recognized; and (b) a requirement for the screening of lessees through a reputable, professional screening organization; provided that such screening shall not violate federal, state or local discrimination laws.

Section 4.3 Pets.

The Board shall have the exclusive authority to prohibit, or to allow and regulate, the keeping of pets on the Property. This authority may be exercised so as to permit or prohibit different types of pets, but those pets which are permitted (if any) shall be limited to common domestic house pets such as dogs, cats, fish, birds and the like. No household pet or animal shall be allowed in or about the Project, including the Common Elements, at any time without close supervision by an Owner or Occupant. Owners and Occupants shall be responsible for strict compliance with all laws and any rules or regulations adopted from time to time by the Association related to pet ownership, including any regulation wholly excluding or limiting the number or type of pets allowed, and shall ensure their pet does not interfere with other Owners' quiet use and enjoyment of the Project premises. Owners and Occupants will be held responsible for any litter, waste, mess or damage created by their pets in the Common Elements and for any offensive noises created by their pets. An Owner's or Occupant's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pet(s), as well as any costs incurred by the Association as a result of such pet(s), and any such amounts shall be and constitute a Default Assessment subject to and enforceable by the Association against the responsible Owner in accordance with this Declaration. Notwithstanding the foregoing, no rule or regulation may prohibit the keeping of a qualified service dog or similar animal by a person who is handicapped within the meaning of the Fair Housing Amendments Act of 1988 or comparable state law; and no change in rule or regulation may adversely affect the rights of an Owner whose pet(s) was permitted at the time the Owner acquired title to his Unit.

Section 4.4 Structures.

Except as hereinafter provided and except as reserved by Declarant hereunder, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, enclosure or outbuilding, shall be placed or erected upon or within any Unit or within the Common Elements. However, during the alteration, repair or remodeling of a Unit, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work, subject to the prior written approval of the Board as to the storage situs and storage method. The work of altering, repairing or remodeling any Unit shall be prosecuted diligently from the commencement thereof until completion.

Section 4.5 Quiet Enjoyment.

All Owners, Occupants and their guests shall have a right of quiet enjoyment in their respective Units, subject to the rights of the Association under the Association Documents, and subject to the rights of other Owners and Occupants to reasonable use of their respective Units and to the normal and customary sounds, activities and odors which are generated from such use given the living density and structure of the Buildings. Taking into consideration the nature of each Building's structure, Owners and Occupants shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with or impede the use and quiet enjoyment of the Property by other Owners, Occupants and their guests.

Section 4.6 Cabanas.

The Map reflects the designation of a "Limited Use Area" adjacent to the pool and amenity area. The Limited Use Area is intended for the future development of cabanas and other light uses. The Association is granted the exclusive right to construct cabanas and other light uses in such Limited Use Area, which cabanas shall be General Common Elements; *provided, however,* that such construction must comply with all applicable ordinances and regulations, including those limiting total occupancy, and providing for methods of ingress and egress. The Association shall be responsible for maintenance of the cabanas and other improvements, as and when constructed.

Section 4.7 Miscellaneous.

4.7.1 Except to the extent allowed or required under the Act, no advertising or signs of any character shall be erected, placed, permitted or maintained on any Unit other than an appropriate identifying number, except for rights reserved by the Declarant hereunder and except as approved by the Board and consistent with the Act.

4.7.2 No clotheslines, dog runs or kennels, drying yards, service yards, woodpiles or storage areas (except as depicted on the Map) shall be so located on any Unit or the Common Elements, including balconies, decks, patios, or terraces, as to be visible from a street, from any other Unit or from the General Common Elements.

4.7.3 Absent Board approval, all types of refrigerating, cooling or heating apparatus shall be concealed within the Unit and in no event may such an apparatus be placed upon the Common Elements.

4.7.4 No wind generators of any kind shall be constructed, installed, erected or maintained on the Project.

4.7.5 Except to the extent this provision contravenes applicable state or federal law, no satellite dishes or exterior aerials or antennas of any kind may be placed upon the exterior of the Buildings or upon any part of a Unit or the Common Elements without the prior written approval of the Board, which may impose conditions, including, but not limited to, size

or height limitations and screening requirements, as it may deem appropriate, in connection with any approval.

4.7.6 A vehicle may be parked on the Property only if such vehicle is on functioning wheels and completely fits within and is kept within the boundaries of an authorized parking space. The foregoing restriction shall not restrict trucks or other commercial vehicles within the Property that are necessary for the construction or the maintenance of the Common Elements, Units or any improvements located thereon.

4.7.7 Except as hereinabove provided, no abandoned or inoperable passenger cars or other vehicles of any kind shall be stored or parked on the Property. An "abandoned or inoperable vehicle" shall be defined by the Board by adoption of rules for the Association.

4.7.8 The Association is authorized to adopt rules, regulations and policies setting forth additional restrictions on the parking and storage of vehicles on the Property, the storage of materials on the Property, the performance of work within parking spaces and the placement of vehicles within parking spaces, all of the foregoing rules to be consistent with the Act. Except as provided for in Section 3.6.3, LCE Parking Spaces can only be leased to Owners, Occupants and the Association; *provided, however*, that this limitation on leasing parking spaces shall not apply to Declarant.

4.7.9 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed or conducted on the Property.

4.7.10 No Owner or Occupant, other than Declarant, may install hard surface flooring in his Unit, such as tile or wood flooring, without the prior written consent of the Board, except for the replacement of floor coverings of the same type as originally installed in the Unit by Declarant, and without first installing sufficient sound insulation to minimize sound transmission to the Unit under the Owner's Unit.

4.7.11 No Owner or Occupant shall cause or permit any physical changes to his Unit that could jeopardize or impair the weather-tight soundness or safety of the Buildings, any Building system or any other improvement located on the Property.

4.7.12 No Owner or Occupant shall cause or permit any physical changes to his Unit which could negatively affect or damage the sound barriers or sound attenuation materials installed on or within the Ceilings, floors or walls between the Units. The provisions of this Section 4.7.12 shall not apply to Declarant's original construction of the Units.

4.7.13 No use shall be made of the Property or any Unit which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.

ARTICLE 5
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 5.1 The Association.

Subject to Declarant's reserved rights, the operation and administration of the Association, the Property and the Common Elements shall be governed by the Association Documents, rules and regulations adopted by the Association and the mandatory provisions of Act. The Association shall be responsible for the operation and management of the Common Elements. The Association shall have all powers described in the Association Documents, the Act and the statute under which the Association is incorporated. All power and authority of the Association shall be vested in the Board, unless action or approval by individual Owners is specifically required by the Association Documents, the Act or this Declaration. The Association shall operate and manage the Common Elements for the purposes of: (a) administering and enforcing the covenants, restrictions, easements, charges and liens set forth in the Association Documents and any rules and regulations adopted by the Association; (b) maintaining, repairing and replacing those portions of the Common Elements and any other property for which it is responsible; and (c) preserving the value and the architectural character of the Project.

Section 5.2 Membership in the Association.

Every Owner shall be a Member of the Association. When more than one (1) Person is an Owner of a Unit, all such Persons shall be members of the Association, but multiple ownership of a Unit shall not increase the voting rights allocated to such Unit, nor authorize the division of the voting rights. Membership shall be appurtenant to and may not be separated from ownership of a Unit, except as provided in Section 5.3 below.

Section 5.3 Transfer of Membership.

Except as approved by the Association and in order to meet Agency requirements, an Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. The Association shall not create a right of first refusal on any Unit and Owners may transfer ownership of their Units free from any such right.

Section 5.4 Membership and Voting.

The Association shall have one (1) class of membership consisting of all Owners, including Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.2 above. Each Owner, including Declarant while Declarant owns any Unit, is subject to all the rights and duties assigned to Owners under the Association Documents. Notwithstanding the number of Owners of record for any particular Unit, each Dwelling Unit is entitled to one weighted vote as further described in Section 2.2 above. Votes cannot be fractionally divided. An Owner may designate a natural Person to act as the Owner's

proxy, to vote on the Owner's behalf. The voting rights of Owners are more fully described in the Bylaws.

Section 5.5 Declarant Control.

Declarant shall be entitled to appoint and remove the members of the Board and officers of the Association during the "Declarant Control Period". The Declarant Control Period begins one (1) year prior to the recording of this Declaration and shall terminate upon the first to occur of: (a) sixty (60) days after conveyance by Declarant of seventy-five percent (75%) of the total number of Units that may be created in the Project to Owners other than Declarant; (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Units was last exercised by Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Declarant Control Period, but, in that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Notwithstanding the Declarant Control Period, not later than sixty (60) days after conveyance by Declarant of twenty-five percent (25%) of the total number of Units that may be created in the Project to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board will be elected by Owners other than Declarant; and not later than sixty (60) days after conveyance by Declarant of fifty percent (50%) of the total number of Units that may be created in the Project to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board will be elected by Owners other than Declarant. Not later than the termination of the Declarant Control Period as provided above, the Owners (including Declarant) shall elect a Board of at least three (3) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election. Within sixty (60) days after the Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in §38-33.3-303(9) of the Act.

Section 5.6 Books and Records.

The Association shall make available to Owners and to Mortgagees for inspection, 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. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

Section 5.7 Manager.

The Association may employ or contract for the services of a Manager to whom the Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except as directed by the Board.

Section 5.8 Rights of Action.

The Association, on behalf of itself and any aggrieved Owner, shall be granted a right of action against any and all 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 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 5.8, the Association or any Unit Owner shall have the right, but not the obligation, to enforce Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. 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.

Section 5.9 Implied Rights and Obligations.

The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

Section 5.10 Notice.

All notices to the Association or the Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Board may designate by written notice to all Owners and to all Mortgagees of the Units who have notified the Association that they hold a security interest in a Unit. Except as otherwise provided herein, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association and shall be hand delivered or sent by first-class mail. All notices to Mortgagees shall be sent, except where a different manner of notice is specified elsewhere in the Association Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. Mailed notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 5.11 Title to Certain Property.

Declarant may elect, in its sole discretion, to convey to the Association title to certain property located within the Project and certain personal property. The Association shall accept title to said property and agrees to own and maintain any property so transferred to the Association by Declarant. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all monetary liens (other than the lien of real estate taxes and any special assessments not then due and payable).

Section 5.12 Indemnity.

Subject to Section 10.12, each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and other Owners from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), 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 Owner as a result of or in connection with: (a) the willful misconduct, negligence or breach of the Act, this Declaration, the Bylaws or the rules and regulations of the Association by the indemnifying Owner or Owner's Agent; (b) 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 Owner's Agent; or (c) the operation, use, ownership or maintenance of the indemnifying Owner's Dwelling Unit by the indemnifying Owner or Owner's Agent. Notwithstanding the foregoing, no Person will be entitled to indemnification from an Owner pursuant to this Section 5.12 as the result of any act or omission attributable to the gross negligence or willful misconduct of such Person. 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 a Special Assessment against the indemnifying Owner's Dwelling Unit. If the indemnifying Owner fails to make such payment within thirty (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 Owner's Agent from liability for its own acts or omissions. Nothing contained in this Section 5.12 will be construed to provide for any indemnification which violates applicable laws, voids any or all of the provisions of this Section 5.12 or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or Owners have by law.

ARTICLE 6
POWERS OF THE BOARD OF THE ASSOCIATION

Section 6.1 Powers.

Except as provided in the Bylaws and the Act, and subject to Declarant's reserved rights herein, the Board may act in all instances on behalf of the Association to:

6.1.1 Adopt and amend rules and regulations regarding the use and enjoyment of the Common Elements and reasonable restrictions on the use of the Units;

6.1.2 Adopt and amend budgets for revenues, expenditures and Assessments, subject to Section 11.2 below;

6.1.3 Hire and terminate Managers and other employees, agents and independent contractors;

6.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or on behalf of two (2) or more Owners on matters affecting the Project;

6.1.5 Make contracts and incur liabilities, except that any contract providing for the services of Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety days written notice unless a shorter notice period is mutually agreed to by the parties to the contract;

6.1.6 Regulate the use, maintenance, repair, replacement and modification of the Common Elements, including the right to designate certain General Common Elements for a specific use, such as, but not limited to, bicycle storage and car cleaning;

6.1.7 Cause additional improvements to be made as part of the Common Elements;

6.1.8 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that the Common Elements may be conveyed or subjected to a security interest only if: (a) Members entitled to cast at least sixty-seven percent (67%) of the weighted votes, including sixty-seven percent (67%) of the weighted votes allocated to Units not owned by Declarant, agree to that action; (b) the provisions of Article 17 are followed with respect to approval of First Mortgagees; and (c) all Owners to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

6.1.9 Grant easements, leases, licenses and concessions through or over the Common Elements;

6.1.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

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

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

6.1.13 Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;

6.1.14 Assign its right to future income, including the right to receive Assessments;

6.1.15 Enter into agreements, including easements, with adjacent landowners for the betterment of the Project;

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

6.1.17 Except as provided in Section 6.2, exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

6.1.18 Except as provided in Section 6.2, exercise any other powers necessary and proper for the governance and operation of the Association.

Section 6.2 Limitation of Powers.

The Board may not act on behalf of the Association to: (a) amend this Declaration, except as provided for herein; (b) terminate the Association or this Declaration; (c) elect directors to the Board, other than to fill a vacancy for the unexpired portion of any director's term (as provided in the Bylaws), subject to Declarant's rights under Article 15; or (d) determine the qualification powers and duties, or terms of office, of directors.

ARTICLE 7 MECHANIC'S LIENS

Section 7.1 No Liability.

If any Owner shall cause any material to be furnished to his 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 Unit.

Section 7.2 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 and

enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall, at his 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.

Section 7.3 Association Action.

Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or the 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 effected against a Unit(s).

**ARTICLE 8
EASEMENTS**

Section 8.1 Recorded Easements.

The Property shall be subject to all easements as shown on any Map or plat, those of record, those provided in the Act (including easements for encroachment set forth in §38-33.3-214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article 8 and elsewhere in this Declaration. In addition, pursuant to §38-33.3-205(m) of the Act, the recording data for certain recorded easements and licenses appurtenant to the Project are identified on the attached Exhibit C.

Section 8.2 Declarant's Rights Incident to Construction.

Declarant, for itself and its successors and assigns, the Association and/or for the Owners, 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 development and sale of the Units or improvements on the Property or other real property owned by Declarant, the Declarant Reserved Development Area as described on the Map, or other properties abutting and contiguous to the Property; *provided, however*, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 8.3 Utility Easements.

There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements, the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sanitary sewer, storm sewer, gas, telephone,

cable television and electricity. Said blanket easement includes future utility services not presently available to the Units and the Common Elements 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 the Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes 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 Property, subject to approval by the Association as to locations, which approval shall not be unreasonably withheld.

Section 8.4 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 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 restrictions on the use of Common Elements set forth in writing by the Association, such as, but not limited to, for closure for repairs and maintenance.

Section 8.5 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 in the proper performance of their duties, without notice, and at any time.

Section 8.6 Structural Support Easements.

Each Unit is subject to a blanket easement for structural support in all walls, columns, joists, girders and other structural components located in or passing through another Unit or other parts of a Building, or shared with an adjoining Unit or the Common Elements, and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property.

Section 8.7 Easements for Encroachments.

If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, an easement for the existence of such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon another Unit, the Owner of that Unit shall and does have an easement for the existence of such encroachment and for the maintenance of same. The easement for encroachments shall extend for whatever period of time the encroachment exists and shall not be considered an encumbrance either on the Common Elements or on a Unit. Encroachments referred to herein include, but are not limited to, unintentional encroachments caused by error in the original construction of the Buildings, by error in the Map, by the settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the

Project or any part thereof or by any other movement of any portion of the improvements located within the Project.

Section 8.8 Easement for Maintenance.

The Association shall have the irrevocable right, to be exercised only by the Manager, the Board or officers or employees of the Association unless otherwise delegated in writing by the Association, to have access to each Unit from time to time during reasonable hours on reasonable notice as may be necessary for the maintenance, repair or replacement of any of the Common Elements, 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 under Article 10 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. Each Owner shall afford such access at reasonable times and upon reasonable notice, to and through his Unit and its Limited Common Elements for maintenance, repair and replacement; *provided that*, access may be had without notice and at any time in case of emergency.

Section 8.9 Project Signs.

Declarant and the Association shall have a non-exclusive easement and right to erect and maintain temporary and permanent signs and related monuments identifying the common interest community on the Common Elements and on Units owned by the Declarant. Those parts of the Property on which monument signs or related decorative improvements are located shall be subject to non-exclusive easements in favor of Declarant and the Association for the continuing use maintenance, repair and replacement of said signs and improvements.

Section 8.10 Declarant's Easements.

The Units and the Common Elements are subject to exclusive easements in favor of the Declarant for the exercise of all rights reserved to Declarant in the Association Documents.

Section 8.11 Continuation, Scope and Conflict of Easements.

The easements set forth in this Article 8: (a) shall run with the land and shall be appurtenant to the benefited Property; (b) shall supplement and not limit any easements described elsewhere in this Declaration, or otherwise recorded; (c) shall be permanent, subject only to termination in accordance with the terms of the easement; and (d) shall include reasonable access to the easement areas over and through the Project for purposes of construction, maintenance, repair, replacement and reconstruction.

Section 8.12 Non-Interference; Impairment Prohibited.

All Persons exercising easement rights shall do so in a reasonable manner so as not to materially interfere with the operation of the Project or damage the Project, and shall be

financially liable for all costs of repair of any part of the Project which is damaged by the Person's exercise of the easement rights. Except for Declarant in the exercise of Declarant's reserved rights herein, no Person shall impair, obstruct or cause damage to any easement area, or improvements or equipment installed therein. Notwithstanding anything in this Declaration to the contrary, no Owner or Occupant shall be denied reasonable access to his Unit or the right to utility services thereto.

Section 8.13 Benefit of Easements.

All easements benefiting a Unit shall benefit the Owners and Occupants of the Unit, and their families and guests. However, an Owner who has delegated the right to occupy the Unit to any Occupant(s), whether by a lease or otherwise, does not have the use and other easement rights in the Property during such delegated occupancy, except: (a) as a guest of an Owner or Occupant; or (b) in connection with the inspection of the Unit or recovery of possession of the Unit pursuant to law.

**ARTICLE 9
MAINTENANCE**

Section 9.1 Maintenance by Owners.

Each Owner shall maintain and keep in repair his Unit, including the fixtures therein, to the extent current repair shall be necessary in order to avoid damaging other Owners' property or the Common 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. In addition, each Unit Owner is responsible for the maintenance of any HVAC systems located outside the boundaries of the Unit, but servicing only that Unit. An Owner shall do no act or any work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall maintain free from clutter and debris any Limited Common Elements allocated to his Unit, including, without limitation, decks, balconies, patios, terraces, LCE Parking Spaces and LCE Storage Spaces. Each Owner shall be responsible for the maintenance of the interior non-supporting walls and floors of his Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting to the Exterior Walls, Ceilings and floors, including doors, windows and screens. The Association reserves the right to assign further maintenance responsibility to the Unit Owner of certain areas of each Unit and of other Limited Common Elements allocated to the Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and non-discriminatory manner.

Section 9.2 Owner's Failure to Maintain or Repair.

In the event that a Unit (including its allocated Limited Common Elements, and other property assigned to the Owner of the Unit for maintenance pursuant to Section 9.1) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the property 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 property 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 (after a determination by the Board that the condition of such Unit [or other property] negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit (or other property) to perform such work as is reasonably required to restore the Unit (or other property) to a condition of good order and repair. If damage is caused to the Common Elements or other Units by an Owner or Owner's Agent, or by any condition in the Unit or its Limited Common Elements which the Owner or Owner's Agent has caused or allowed to exist, then the Association, after notice to the Owner and with the approval of the Board, may repair the damage or correct the condition. All costs incurred by the Association pursuant to this Section 9.2 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 unpaid Assessments levied in accordance with Article 11 of this Declaration.

Section 9.3 Maintenance by Association.

9.3.1 The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units (except as set forth pursuant to Section 9.1 above and unless necessitated by damage caused by the negligence, misuse or tortious act of an Owner or Owner's Agent as set forth in Section 9.4 below), which shall be the Common Expense of all Owners; *provided, however*, that the Board may determine, in its discretion, (a) that the cost of maintenance and repair of Limited Common Elements undertaken by the Association shall be an expense of the Owner(s) allocated the Limited Common Elements so maintained or repaired, and (b) that the expense for the maintenance of the Park Homes Building, shall be the sole responsibility of the Owners of Units within the Park Homes Building based upon the relative Allocated Interests of the Park Homes Units.

9.3.2 Except as provided in Section 9.1 above, Association maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, gates, signage, irrigation systems, perimeter fencing, Building fire systems, Building security systems, Buildings (excluding the Units), hallways, elevators serving the Property, parking spaces, storage spaces, sidewalks, driveways, roofs, amenity areas, pool, lounge, cold water car wash, if any, mail room, Manager's office and other improvements located in the Common Elements. In the event the Association does not maintain or repair the Common Elements within thirty (30) days after a written demand by Declarant, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. If Declarant elects to conduct any maintenance or repair work on behalf of the Association, Declarant shall bill the Association for the costs of the work conducted, providing documentation of the charges incurred. The Association shall reimburse Declarant for the maintenance or repair within fifteen (15) days of the Association's receipt of Declarant's invoice.

9.3.3 The Association shall regularly inspect the Common Elements for the purpose of evaluating the need for maintenance, repair or replacement. Owners or Occupants

shall promptly report to the Association any material defect in the Common Elements which may require maintenance, repair or replacement.

Section 9.4 Association Maintenance as Common Expense.

Except as otherwise provided herein, the cost of maintenance and repair by the Association shall be a Common Expense of all Owners, to be shared by each Owner according to the Allocated Interests therefor set forth on Exhibit B. 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. However, if such damage is caused by negligent or tortious acts of an Owner or Owner's Agent, then such Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that such Owner's or Owner's Agent's negligence or intentional conduct caused such damage, which must be timely paid.

ARTICLE 10
INSURANCE

Section 10.1 General Insurance Provisions.

Not later than the time of the first conveyance by Declarant of a Unit to an Owner, the Association shall acquire and pay for, out of the Assessments levied under Article 11 below, the following insurance policies carried with reputable insurance companies authorized to do business and licensed to provide insurance in Colorado:

10.1.1 *Property Insurance Coverage.* Property insurance, with extended coverage, including boiler and machinery, fire, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes coinsurance), special condominium, building ordinance and inflation guard endorsements (when they can be obtained), in amounts determined by the Board to represent not less than the full then current insurable replacement cost of the Common Elements, *and including* all fixtures, interior and Exterior Walls and floors, partitions, decorated and finished surfaces of interior and Exterior Walls, floors, and ceilings, doors, windows and other elements or materials which comprise a part of the Units as originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, including FNMA and FHLMC, *and including* any fixtures, equipment or other property within the Units when originally sold by Declarant to an Owner and which are to be financed by a Mortgage to be purchased by an Agency, including FNMA and FHLMC, *but excluding* any betterments and improvements made by Owners (after the transfer of title to the Unit by Declarant) and Building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Board; *provided, however*, that if any Agency requires specific deductibles, the Board shall follow such Agency's requirements. The Association shall obtain insurance covering the specifications of each Unit as originally sold by Declarant to an Owner. Each Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit that increase the replacement value of his Unit (after the transfer of title to the Unit by Declarant). In the event that

satisfactory arrangement is not made for additional insurance by the Owner, the Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to the original specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 11.7 hereof in the event the Association pays such premium for an Owner. Subject to Section 10.2 below, such property insurance policy must be written by an insurance carrier that has an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports International Edition, or such other insurance carrier approved by the Board and acceptable to applicable Agencies.

10.1.2 *Comprehensive Liability.* Comprehensive general public liability and property damage insurance in such amounts as the Board deems desirable, provided that such coverage shall be for at least One Million and No/100 Dollars (\$1,000,000.00) for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of the Common Elements including a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Denver metropolitan area including automobile liability insurance if appropriate. The Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a Certificate of Insurance) to the Board that such party has current satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance on all of which the Association is named as an additional insured.

Section 10.2 Form of Insurance Policies.

The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in a Unit and in the Common Elements or membership in the Association. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Allocated Interests for the Unit that the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, and no failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Section 10.3 Owners' Insurance.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner and any additions and alterations to a Unit which increase the Unit's replacement value above that of the specifications for the Unit as originally sold by Declarant to an Owner, casualty and public liability insurance coverage for each Unit and the work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit. The Unit Owners shall also carry an HO-6 Insurance Policy with a loss assessment endorsement.

Section 10.4 Certificates of Insurance; Cancellation.

Certificates of insurance shall be issued by the Association to each Owner and Mortgagee upon written request to the Association. All policies required to be carried under this Article 10 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the Association's insurance described in Article 10 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States Mail to all Owners and to all Eligible Mortgagees.

Section 10.5 Insurance Proceeds.

Any loss covered by the property insurance policy described in Section 10.1 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 Section 10.7 below, 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 regime created by this Declaration is terminated.

Section 10.6 Insurer Obligation.

An insurer that has issued an insurance policy for the insurance described in Section 10.1, Section 10.9 and Section 10.10, or its agent shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of any other Mortgagee.

Section 10.7 Repair and Replacement.

Any portion of the Common Elements for which insurance is required under this Article 10 which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained from Owners holding at least sixty-seven percent (67%) of the weighted vote in the Association, and Declarant during the Declarant Control Period;

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

10.7.3 There is a vote not to rebuild by (a) Owners holding at least sixty-seven percent (67%) of the weighted vote of the Association, (b) every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, and (c) Declarant during the Declarant Control Period; or

10.7.4 Prior to the conveyance of any Unit to a Person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of the Common Elements in excess of insurance proceeds and reserves is a Common Expense, except as otherwise determined by the Board. If all of the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other Persons will be distributees, the insurance proceeds must be distributed to all Owners or Mortgagees, as their interests may appear in proportion to each Unit's Allocated Interests.

Section 10.8 Common Expenses.

Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses; *provided, however*, that if the Association's property and extended coverage insurance covers Limited Common Elements, fixtures, equipment or other property within or associated with some but not all of the Units, or other insurance attributable to some but not all of the Units, the Association reserves the right to charge the Owners of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage as calculated by or through the Association.

Section 10.9 Fidelity Insurance.

Fidelity insurance or fidelity bonds must be maintained by the Association to protect against acts and inaction on the part of its officers, directors, trustees and employees, and

