

CONDOMINIUM DECLARATION  
FOR  
THE 925 EAST 8<sup>TH</sup> AVENUE CONDOMINIUM

THIS CONDOMINIUM DECLARATION FOR The 925 East 8<sup>th</sup> Avenue Condominium (the "Declaration") dated DECEMBER 1, 1999, shall be effective upon recordation and is made by Barkley Hobbes, LLC, a Colorado limited liability company ("Declarant"). Declarant is the owner of certain real property in the City and County of Denver, Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

ARTICLE 1. IMPOSITION OF COVENANTS

Section 1.1 Purpose. The purpose of this Declaration is to create a condominium project known as The 925 East 8<sup>th</sup> Avenue Condominium (the "Condominium Project" or "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 (the "Act").

Section 1.2 Intention of Declarant. Declarant desires to protect the value and desirability of the Condominium Project, to create a harmonious and attractive development, and to promote and safeguard the health, comfort, safety, convenience, and welfare of the Owners of Units in the Condominium Project.

Section 1.3 Condominium Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to condominium ownership under the Act, and hereby imposes upon all of the Property the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved, subject to the provisions of this Declaration.

Section 1.4 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Unit Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

## ARTICLE 2. DEFINITIONS

The following words, when used in this Declaration, shall have the meanings designated below unless the context expressly requires otherwise:

Section 2.1 "Act" means the Colorado Common Interest Ownership Act as defined in Section 1.1 hereof. In the event the Act is repealed, the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

Section 2.2 "Agencies" shall mean and collectively refer to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), the Colorado Housing and Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

Section 2.3 "Allocated Interests" means the undivided interest in the Common Elements and the Common Expenses Liability and the votes in the Association allocated to each of the Units in the Condominium Project. The formulas used to establish the Allocated Interests are described in Article 4. The Allocated Interests for each Unit are set forth on Exhibit B.

Section 2.4 "Assessments" means the annual, special and default Assessments levied pursuant to this Declaration.

Section 2.5 "Association" means The 925 East 8<sup>th</sup> Avenue Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.6 "Board of Managers" or "Executive Board" means the governing body of the Association, as provided in this Declaration and in the articles of incorporation and Bylaws of the Association and in the Act.

Section 2.7 "Bylaws" means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including the amendments thereto.

Section 2.8 "Common Elements" means all of the Condominium Project, other than the Units, but including, without limiting the generality of the foregoing, the following components:

- (a) the Property; and
- (b) the Improvements (including, but not by way of limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, patios, balconies, entrances and exits, and the mechanical installations of the Improvements consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, cable television, and heating which exist for use by one or more of the Unit Owners,

including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), except for the Units; and

(c) the yards, sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, gardens, parking areas, and related facilities upon the Property; and

(d) the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Improvements existing for use of one or more of the Unit Owners; and

(e) in general, all other parts of the Condominium Project designated by Declarant as Common Elements and existing for the use of one or more of the Unit Owners.

The Common Elements shall be owned by the Unit Owners of the separate Units, each Unit Owner of a Unit having an undivided interest in the Common Elements as allocated in Exhibit B.

Section 2.9 "Common Expenses Liability" means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

Section 2.10 "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, without limiting the generality of the foregoing, the following items:

(a) expenses of administration, insurance, operation, and management, repair, or replacement of the Common Elements except to the extent such repairs and replacements are responsibilities of a Unit Owner as provided in this Declaration;

(b) expenses declared Common Expenses by the provisions of this Declaration or the Bylaws;

(c) all sums lawfully assessed against the Units by the Board of Managers;

(d) expenses agreed upon as Common Expenses by the members of the Association; and

(e) expenses provided to be paid pursuant to any Management Agreement.

Section 2.11 "Condominium Documents" means the basic documents creating and governing the Condominium Project, including, but not limited to, this Declaration, the articles of incorporation of the Association and Bylaws, the Map, and any procedures, Rules and Regulations, or policies relating to the Condominium Project adopted under such documents by the Association or the Board of Managers.

Section 2.12 "Condominium Map" or "Map" means that part of this Declaration that depicts all or any portion of the Condominium Project in three dimensions, is executed by the Declarant and is recorded in the Records. A Map and a Plat may be combined in one instrument. In a Map, a "Horizontal Boundary" means a plane of elevation relative to a described benchmark that defines either a lower or upper dimension of a Unit such that the real estate respectively below or above the defined

plane is not part of the Unit. In a Map, a "Vertical Boundary" means the defined limit of a Unit that is not a Horizontal Boundary of that Unit.

Section 2.13 "Condominium Project" or "Project" means the term as defined in Section 1.1 hereof.

Section 2.14 "Condominium Unit" means the fee simple interest in and to a Unit, together with the undivided interest in the Common Elements appurtenant to the Unit, as allocated in Exhibit B.

Section 2.15 "Costs of Enforcement" means all monetary fees, fines, late charges, interest, expenses, costs, including receiver's and appraiser's fees, and reasonable attorneys' fees and disbursements, including legal assistants' fees, incurred by the Association in connection with the collection of Assessments or in connection with the enforcement of the terms, conditions and obligations of the Condominium Documents.

Section 2.16 "Declarant" means Barkley Hobbes, LLC, a Colorado limited liability company, its successors and assigns.

Section 2.17 "Declaration" means this Declaration, together with any supplement or amendment to this Declaration, and any other recorded instrument however denominated which exercises a Development Right, executed by Declarant and recorded in the Records. The term Declaration includes all supplements to the Maps and Plats recorded with this Declaration and all amendments to the Declaration without specific reference thereto.

Section 2.18 "Deed" means each initial Special Warranty Deed recorded after the date hereof by which Declarant conveys a Unit.

Section 2.19 "Development Rights" means the "Expansion Rights" and the "Development Rights" set forth in Article 16 of this Declaration.

Section 2.20 "Eligible First Mortgagee" means a First Mortgagee or insurers or guarantors of First Mortgages which has notified the Association in writing of its name and address and status as a First Mortgagee and has requested that it receive notices provided for in Article 20 entitled "Mortgagee Protections".

Section 2.21 "First Mortgagee" means a holder of a Security Interest in a Unit which has priority over all other Security Interests in the Unit.

Section 2.22 "Improvement(s)" means the building(s) (including all fixtures and improvements contained within it) located on the Property in which Units or Common Elements are located.

Section 2.23 "Limited Common Elements" means those parts of the Common Elements which are limited to and reserved for the use in connection with one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Elements shall include any balcony, deck, patio, courtyard or porch appurtenant to and accessible only from a Unit, any shutters, awnings, window boxes, doorsteps, stoops, porch, balcony or patio designated or designed to serve a single Unit, but located outside the Unit's boundaries, storage spaces and parking spaces outside Units

designated as Limited Common Elements in this Declaration or on the Map, if any. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving 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 part of the Common Elements. Limited Common Elements also include any portion of the Common Elements allocated by this Declaration or on the Map as Limited Common Elements. All Limited Common Elements shall be used in connection with the appurtenant Unit(s) to the exclusion of the use thereof by the other Unit Owners, except by invitation. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, ceilings and floors of any balcony or of any other Limited Common Elements appurtenant to and accessible only from the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition. No reference to Limited Common Elements need be made in any instrument of conveyance or encumbrance in order to convey or encumber the Limited Common Elements appurtenant to a Unit.

Section 2.24 "Majority of Owners" means a majority (or any greater percentage that may be specifically required for a particular action or authorization by the terms of this Declaration) of the total voting power of the members of the Association.

Section 2.25 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Board of Managers relative to the operation, maintenance, and management of the Condominium Project.

Section 2.26 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Association.

Section 2.27 "Occupant" means any member of a Unit Owner's family, or a Unit Owner's guests, invitees, servants, tenants, employees, or licensees who occupy a Unit or are on the Common Elements for any period of time.

Section 2.28 "Parking Spaces" shall mean and refer to parking spaces identified as Limited Common Elements, as shown on the Condominium Map. Parking Spaces may only be conveyed to Owners of Units as Limited Common Elements appurtenant to a Unit as provided in Section 7.4 below.

Section 2.29 "Period of Declarant Control" means the maximum period of time defined and limited by the Act and Section 8.6 of this Declaration during which the Declarant may, at its option, control the Association.

Section 2.30 "Person" means an individual, association, partnership, limited liability company, corporation, trust, governmental agency, political subdivision, or any combination thereof.

Section 2.31 "Plat" means that part of a Declaration that is a land survey plat as set forth in Section 38-51-102, Colorado Revised Statutes, as amended, depicts all or any portion of the Condominium Project in two dimensions, is executed by the Declarant and is recorded in the Records.

Section 2.32 "Property" means the real property described in the attached Exhibit A.

Section 2.33 "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that, by custom, usage, or law, pass with the conveyance of land though not described in the contract of sale or instrument of conveyance. Real Estate includes parcels with or without Horizontal Boundaries and spaces that may be filled with air or water.

Section 2.34 "Records" means the Office of the Clerk and Recorder in every county in which any portion of the Condominium Project is located.

Section 2.35 "Rules and Regulations" means the rules and regulations promulgated by the Board of Managers for the management, preservation, safety, control, and orderly operation of the Condominium Project in order to effectuate the intent and to enforce the obligations set forth in the Condominium Documents, as amended and supplemented from time to time.

Section 2.36 "Security Interest" means an interest in Real Estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The terms includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation. The holder of a Security Interest includes any insurer or guarantor of a Security Interest.

Section 2.37 "Special Declarant Rights" means those rights reserved by Declarant in Articles 15 and 16 of this Declaration.

Section 2.38 "Storage Spaces" shall mean and refer to Storage Spaces which are Common Elements and shall be assigned for use by Owners by the Association.

Section 2.39 "Unit" means a physical portion of the Condominium Project which is designated for separate ownership or occupancy and the boundaries of which are described in or determined by this Declaration. Each Unit shall be designated by a separate number, letter, address or other symbol or combination thereof that identifies only one Unit in the Condominium Project as more specifically set forth on Exhibit B. If walls, floors, or ceilings are designated as boundaries of a Unit in this Declaration, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit and all other portions of the walls, floors or ceilings are a part of the Common Elements. Subject to Section 2.23, all spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

Section 2.40 "Unit Owner" or "Owner" means the Declarant or any other person who owns record title to a Unit (including a contract seller, but excluding a contract purchaser) but excluding any person having a Security Interest in a Unit unless such person has acquired record title to the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure.

### ARTICLE 3. DIVISION OF PROJECT INTO CONDOMINIUM OWNERSHIP

Section 3.1 Division Into Condominium Units. The Property is hereby divided into 30 Condominium Units, each consisting of a fee simple interest in a Unit and an undivided fee simple interest in the Common Elements in accordance with the respective undivided interests in the Common Elements as set forth in Exhibit B. Such undivided interests in the Common Elements are hereby declared to be appurtenant to the respective Units. The total of the undivided interests in the Common Elements set forth in Exhibit B, rounded to the nearest 1%, shall be deemed to equal one hundred percent (100%) for purposes of this Declaration.

Section 3.2 Delineation of Unit Boundaries. The boundaries of each Unit are delineated and designated by an identifying number on the Map, and those numbers are set forth in Exhibit B.

Section 3.3 Inseparability of Condominium Unit. Except as provided in Section 3.5 below, and in the Article entitled "Reservation of Expansion and Development Rights": (a) no part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be partitioned or separated from any other part thereof during the period of condominium ownership prescribed in this Declaration; (b) each Condominium Unit shall always be conveyed, transferred, devised, bequeathed, encumbered, and otherwise affected only as a complete Condominium Unit; and (c) every conveyance, transfer, gift, devise, bequest, encumbrance, or other disposition of a Condominium Unit or any part thereof shall be presumed to be a disposition of the entire Condominium Unit, together with all appurtenant rights and interests created by law or by this Declaration, including the Unit Owner's membership in the Association.

Section 3.4 Non-Partitionability of Common Elements. The Common Elements shall be owned in common by all of the Unit Owners and shall remain physically undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Unit Owner shall be deemed to have specifically waived such Unit 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 Section may be pleaded as a bar to the maintenance of such an action. Any Unit Owner who shall institute or maintain any such action shall be liable to the Association and hereby agrees to reimburse the Association for the Costs of Enforcement in defending any such action.

Section 3.5 Alterations and Subdivision of Units; Relocation of Boundaries Between Adjoining Units. Unit Owner(s) shall have the right to alter their Units, subdivide their Units and relocate boundaries between their Unit and an adjoining Unit and reallocate Limited Common Elements between or among Units, subject to the provisions and requirements of this Declaration and of the Act.

### ARTICLE 4. ALLOCATED INTERESTS

Section 4.1 Allocation of Interests. The Allocated Interests assigned to each Unit are set forth on Exhibit B. These interests have been allocated in accordance with the formulas set out in Section 4.2 below. These formulas are to be used in reallocating interests if Units are added to the Condominium Project or if Units are converted to Common Elements or Limited Common Elements.

Section 4.2 Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulas:

(a) Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based upon the number of bedrooms in each Unit.

(b) Common Expenses Liability. The percentage of liability for Common Expenses allocated to each Unit is based on the number of bedrooms in each Unit.

(c) Votes. Each Unit in the Condominium Project shall have one equal vote. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Project Documents, means the specified percentage, portion, or fraction of all of the votes as allocated in Exhibit B.

Section 4.3 Rounding Convention. The total of any Allocated Interests stated as a fraction, shall be rounded up to the nearest one percent (1%), shall be deemed to equal to one hundred percent (100%) for purposes of this Declaration.

Section 4.4 Effective Date of Reallocation. The effective date for reallocating Allocated Interests to Units as a result of the exercise of Development Rights set forth in Article 16 of this Declaration shall be the date on which the amendment required by Section 16.3 thereof is recorded in the Records.

## ARTICLE 5. CONDOMINIUM MAP

The Map shall be filed in the Records. Any Map filed subsequent to the first Map shall be termed a supplement to such Map, and the numerical sequence of such supplements shall be shown thereon. The Map shall be filed following substantial completion of the Improvement(s) depicted on the Map and prior to the conveyance of any Unit depicted on the Map to a purchaser. The Map shall include a Plat which shows the following:

- (a) the name and a general schematic map of the entire Condominium Project;
- (b) the location and dimensions of all Real Estate not subject to Development Rights, or subject only to the Development Right to withdraw, and the location and dimensions of all existing improvements within that Real Estate;
- (c) a legally sufficient description of any Real Estate subject to Development Rights, labeled to identify the rights applicable to it;
- (d) the extent of any existing encroachments across any Condominium Project boundary;
- (e) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the Condominium Project; and



(f) the distance between any noncontiguous parcels of Real Estate comprising the Condominium Project.

The Map shall also show the following:

(a) the location and dimensions of the vertical boundaries of each Unit and that Unit's identifying number;

(b) horizontal Unit boundaries, if any, with reference to all established data and that Unit's identifying number;

(c) any Units in which the Declarant has reserved the right to create additional Units or Common Elements, identified appropriately;

(d) the approximate location and dimensions of all Limited Common Elements; and

(e) the number, size and location of any sales offices, management offices and models to be maintained by Declarant.

The Map shall contain a certificate of a registered and licensed land surveyor certifying that the Map was prepared subsequent to the substantial completion of the improvements and contains all information required by this Declaration and the Act. Each supplement shall set forth a like certificate when appropriate. In interpreting the Map, the existing physical boundaries of each separate Unit as constructed shall be conclusively presumed to be its boundaries.

## ARTICLE 6. LEGAL DESCRIPTION AND TAXATION OF UNITS

Section 6.1 Contracts to Convey Entered into Prior to Recording of Condominium Declaration and Map. A contract or other agreement for the sale of a Unit entered into prior to the filing of this Declaration in the Records may legally describe such Unit in substantially the manner set forth in this Article 6 and may indicate that this Declaration and Map are to be recorded.

Section 6.2 Contracts to Convey and Conveyances Subsequent to Recording of Declaration and Map. Subsequent to the recording of the Declaration and Map, contracts to convey, instruments of conveyance of Units, and every other instrument affecting title to a Unit shall be in substantially the following form with such omissions, insertions, recitals of fact, or other provisions as may be required by the circumstances or appropriate to conform to the requirements of any governmental authority, practice or usage or requirement of law with respect thereto:

Unit \_\_\_\_\_, [together with Parking Space No. \_\_\_\_\_ as Limited Common Element thereto], The 925 East 8<sup>th</sup> Avenue Condominium, according to the Condominium Declaration for The 925 East 8<sup>th</sup> Avenue Condominium, recorded \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ and the Condominium Map recorded \_\_\_\_\_, 19\_\_\_\_, in Book \_\_\_\_\_ at Page \_\_\_\_\_ in the office of the Clerk and Recorder of the City and County of Denver, Colorado.

The bracketed provisions may be deleted or modified in the event a Parking Space and/or Storage Space is not being conveyed.

Section 6.3 Conveyance Deemed to Describe an Undivided Interest in Common Elements. Every instrument of conveyance, Security Interest, or other instrument affecting the title to a Unit which legally describes the Unit substantially in the manner set forth above shall be construed to describe the Unit, together with the undivided interest in the Common Elements appurtenant to it, and together with all fixtures and improvements contained in it, and to incorporate all the rights incident to ownership of a Unit and all the limitations of ownership as described in the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, including the easement of enjoyment to use the Common Elements.

Section 6.4 Separate Tax Assessments. Upon the filing for record of this Declaration and the Map in the Records, Declarant shall deliver a copy of this Declaration to the assessor of each county specified in the Records as provided by law. The lien for taxes assessed shall be confined to the Unit(s). No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charge shall divest or in any way affect the title to any other Unit.

## ARTICLE 7. UNIT OWNERS' PROPERTY RIGHTS IN COMMON ELEMENTS

Section 7.1 Common Elements. Every Unit Owner shall have a perpetual right and easement of access over, across, and upon the Common Elements for the purpose of access to and from the Unit from public ways for both pedestrian and vehicular travel, which right and easement shall be appurtenant to and pass with the transfer of title to such Unit; provided, however, that such right and easement shall be subject to the following:

- (a) the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, and the Map;
- (b) the right of the Association from time to time to assign on an equitable basis portions of the Common Elements for the exclusive use of the Unit Owner of a particular Unit by an appropriate instrument in writing;
- (c) the right 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 Condominium Project; and
- (d) the right of the Association to adopt, from time to time, any and all rules and regulations concerning the Condominium Project as the Association may determine is necessary or prudent for the management, preservation, safety, control, and orderly operation of the Condominium Project for the benefit of all Unit Owners, and for facilitating the greatest and most convenient availability and use of the Units and Common Elements by Unit Owners.

Section 7.2 Limited Common Elements. Subject to the provisions of this Declaration, every Unit Owner shall have the right to use and enjoy the Limited Common Elements appurtenant to his Unit.

Section 7.3 Amenities. Amenities that exist on the Project consist of a coin operated laundry facility, and a rooftop deck, as identified on the Map. No other amenities are planned to be built by Declarant.

Section 7.4 Parking Spaces and Storage Spaces. Declarant has the right to assign Parking Spaces as shown on the Condominium Map for the exclusive use of the Owners, their tenants, and the families, guests, or invitees of the Owners and their tenants. Declarant or the Association shall assign Storage Spaces for the use of the Owners, their tenants, and the families, guests, or invitees of the Owners and their tenants. Storage Spaces are Common Elements and Parking Spaces are Limited Common Elements.

At the time of the conveyance by a Declarant of a Unit to an Owner (other than a Declarant), Declarant may assign to such Unit one (1) or more Parking Spaces by Deed in the form set forth below. Once assigned to a Condominium Unit, the Parking Space shall be a Limited Common Element appurtenant to the Unit, shall be deemed conveyed or encumbered by any instrument subsequently conveying or encumbering the Unit, and may not be conveyed or encumbered apart from the Unit; provided, however, that such Parking Spaces may be reallocated among the Units in compliance with the provisions the Act and with the consent of Declarant, the Association, and the Owner and First Mortgagee of each Unit whose Parking Space is being changed. Any such change shall be reflected in an instrument recorded by each of the parties named in the preceding sentence. The Declarant also reserves the right to install devices and signage to restrict and control access to the parking area and otherwise to regulate the use of the parking area.

Declarant's rights to assign Parking Spaces, to consent to reallocation of Parking Spaces, and to regulate the use of the parking area under the provisions of this Section shall terminate upon the conveyance by a Declarant of all Units to Owners (other than a Declarant) or ten (10) years from the date this Declaration is recorded in the Records, whichever occurs first. Upon termination of Declarant's rights under this Section, such rights shall be vested in the Association.

No vehicles may be parked on the Project except in the appropriate Parking Space. Unless the Association specifically authorizes storage by an Owner, there shall be no storage or parking of snowmobiles, trailers, recreational vehicles, motorcycles, bicycles, motorbikes, or vehicles deemed by the Association to be too large for the Parking Space upon any part of the parking area or other Common Elements. No vehicles shall be parked and nothing shall be placed or stored on the paved area providing access to the parking area. Each Owner shall be responsible for maintaining the Parking Space and Storage Space allocated to his Unit in a sightly, clean condition, free of debris and unsightly articles of any kind. The storage of gasoline and other flammable materials or noxious or hazardous wastes or materials of any kind within the Unit, Parking Space, or Storage Space is strictly prohibited.

## **ARTICLE 8. MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 8.1 Association Membership. The Association's articles of incorporation shall be filed no later than the date the first Unit in the Condominium Project is conveyed to a purchaser. Every Unit Owner shall be a member of the Association and shall remain a member for the period of the Unit Owner's ownership of a Unit. No Unit Owner, whether one or more persons or entity, shall have more than one membership per Unit owned, but all of the persons or entities owning a Unit shall

be entitled to rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. If title to a Unit is held by more than one individual, by a firm, corporation, partnership, association or other legal entity or any combination thereof, such individuals, entity, or entities shall appoint and authorize one person or alternate persons to represent the Unit Owners of the Unit. Such representative shall be a natural person who is a Unit Owner, or a designated board member or officer of a corporate Unit Owner, or a general partner of a partnership Unit Owner, or a comparable representative of any other entity, and such representative shall have the power to cast votes on behalf of the Unit Owners as a member of the Association, and serve on the Board of Managers if elected, subject to the provisions of and in accordance with the procedures more fully described in the Bylaws of the Association. Notwithstanding the foregoing, if only one of the multiple Unit Owners of a Unit is present at a meeting of the Association, such Unit Owner is entitled to cast the vote allocated to that Unit. If more than one of the multiple Unit Owners are present and there is no written designation of an authorized representative, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the Unit Owners, which majority agreement may be assumed for all purposes if any one of the multiple Unit Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Unit Owners of the Unit.

Section 8.2 Voting Rights and Meetings. Each Unit in the Condominium Project shall have one vote; provided, however, no vote allocated to a Unit owned by the Association may be cast. A meeting of the Association shall be held at least once each year. Special meetings of the Association may be called by the President, by a majority of the Board of Managers, or by Unit Owners having twenty percent (20%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than fourteen (14) and no more than fifty (50) days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by United States Mail to the mailing address of each Unit Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda including the general nature of any proposed amendment to this Declaration or Bylaws, any budget changes, and any proposal to remove an officer or member of the Board of Managers. Unless the Bylaws provide for a lower percentage, a quorum is deemed present throughout any meeting of the Association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the Board of Managers are present, in person or by proxy at the beginning of the meeting.

Section 8.3 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Unit Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Board of Managers. A summary of the proposed budget approved by the Board of Managers shall be mailed to the Unit Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Unit Owners. Unless at the meeting a Majority of Owners, rather than a majority of those present and voting in person or by proxy, reject the proposed budget, the budget is ratified whether or not a quorum is present at the meeting. In the event the proposed budget is rejected, the budget last ratified by the Unit Owners continues until such time as the Unit Owners ratify a subsequent budget proposed by the Board of Managers as provided above.

Section 8.4 Unit Owners' and Association's Addresses for Notices. All Unit Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Unit Owners for notices, demands, and all other communications regarding Association matters. The Unit Owner or the representative of the Unit Owners of a Unit shall furnish such registered address to the secretary of the Association within ten days after transfer of title to the Unit to such Unit Owner or Unit Owners. Such registration shall be in written form and signed by all of the Unit Owners of the Unit or by such persons as are authorized to represent the interests of all Unit Owners of the Unit. If no address is registered or if all of the Unit Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section 8.4. If the address of the Unit is the registered address of the Unit Owner(s), then any notice shall be deemed duly given if delivered to any person occupying the Unit or, if the Unit is unoccupied, if the notice is held and available for the Unit Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Managers shall be sent to the following address or such other address as the Board of Managers may designate from time to time by notice to the Unit Owner(s):

Board of Managers  
The 925 East 8<sup>th</sup> Avenue Condominium Association, Inc.  
925 East 8<sup>th</sup> Avenue  
Denver, CO 80218

Notices given in accordance with this Section 8.4 may be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective upon deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail.

Section 8.5 Transfer Information. All Persons who acquire Unit(s) other than from Declarant shall provide to the Association written notice of the Person's name, address, Unit owned, date of transfer, and name of the former Unit Owner within ten (10) days of the date of transfer. The Person shall also provide a true and correct copy of the recorded instrument conveying or transferring the Unit or such other evidence of the conveyance or transfer as is reasonably acceptable to the Association. In addition, the Association may request such other information as the Association determines is necessary or desirable in connection with obtaining and maintaining information regarding conveyances and transfers of Units. The Association or Managing Agent shall have the right to charge the Person a reasonable administrative fee for processing the transfer in the records of the Association.

Section 8.6 Declarant Control of the Association. There shall be a Period of Declarant Control of the Association, during which a Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Board of Managers. The Period of Declarant Control shall commence upon filing of the Articles of Incorporation of the Association and shall terminate no later than the earlier of:

(a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to Unit Owners other than a Declarant;

- (b) two (2) years after Declarant's last conveyance of a Unit in the ordinary course of business; or
- (c) two (2) years after any right to add new Units was last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Managers before termination of that period, but in that event the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Managers, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

Section 8.7 Required Election of Unit Owners. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Managers shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Managers must be elected by Unit Owners other than the Declarant. Not later than the termination of any Period of Declarant Control, the Unit Owners shall elect a Board of Managers of at least three (3) members, at least a majority of whom shall be Unit Owners other than the Declarant or designated representatives of Unit Owners other than Declarant. The Board of Managers shall elect the officers. The members of the Board of Managers and officers shall take office upon election.

Section 8.8 Removal of Members of the Board of Managers. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice and an opportunity to be heard as required by this Declaration and the Act, the Unit Owners, by sixty-seven percent (67%) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Board of Managers with or without cause, other than a member appointed by the Declarant.

Section 8.9 Requirements for Turnover of Declarant Control. Within sixty (60) days after the Unit Owners other than the Declarant elect a majority of the members of the Board of Managers, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- (a) the original or a certified copy of the recorded Declaration as amended, the Association's articles of incorporation, Bylaws, minute books, other books and records, and any Rules and Regulations which may have been promulgated;
- (b) an accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;

- (c) the Association funds or control thereof;
- (d) all of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;
- (e) a copy, for the non-exclusive use of the Association, of any plans and specifications used in the construction or renovation of the Improvements;
- (f) all insurance policies then in force, in which the Unit Owners, the Association or its members of the Board of Managers and officers are named as insured persons;
- (g) copies of any certificates of occupancy that may have been issued with respect to the Improvements;
- (h) any other permits issued by governmental bodies applicable to the Condominium Project and which are currently in force or which were issued within one year prior to the date on which Unit Owners other than the Declarant took control of the Association;
- (i) written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- (j) a roster of Unit Owners and First Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;
- (k) employment contracts in which the Association is a contracting party; and
- (l) any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services.

## ARTICLE 9. ASSOCIATION POWERS AND DUTIES

Section 9.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Unit Owners as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Condominium Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Elements and the Limited Common Elements, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair. 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 Unit Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. The Association shall establish and maintain, out of the installments of the annual Assessments, an adequate reserve account for maintenance, repair, or replacement of those Common Elements that must be replaced on a periodic basis. The Association shall adopt and amend budgets for revenues, expenditures, and reserves which will be the basis for collection of Assessments for Common Expenses from Unit Owners. The Association shall keep financial records sufficiently detailed to enable the Association to

comply with the requirement that it provide statements of status of Assessments. All financial and other records of the Association shall be made reasonably available for examination by any Unit Owner and such Unit Owner's authorized agents.

Section 9.2 Association Powers. The Association shall have, subject to the limitations contained in this Declaration and the Act, the powers necessary for the administration of the affairs of the Association and the upkeep of the Condominium Project which shall include, but not be limited to, the power to:

- (a) adopt and amend Bylaws and Rules and Regulations;
- (b) adopt and amend budgets for revenues, expenditures and reserves;
- (c) collect assessments for Common Expenses from Owners;
- (d) hire and discharge managing agents;
- (e) hire and discharge employees and agents, other than managing agents, and independent contractors;
- (f) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium Project;
- (g) make contracts and incur liabilities;
- (h) regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- (i) cause additional improvements to be made as part of the Common Elements;
- (j) acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common Elements may be conveyed or subjected to a Security Interest only pursuant to the requirements of the Act;
- (k) grant easements, including permanent easements, leases, licenses and concessions, through or over the Common Elements;
- (l) impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements, and for services provided to Unit Owners;
- (m) impose a reasonable charge for late payment of Assessments, recover Costs of Enforcement for collection of Assessment and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated and, after notice and hearing, levy reasonable fines for violations of this Declaration, Bylaws and Rules and Regulations of the Association;



(n) impose a reasonable charge for the preparation and recordation of amendments to this Declaration or for preparation of statements of unpaid Assessments;

(o) provide for the indemnification of the Association's officers and Board of Managers and maintain Board of Managers' and officers' liability insurance;

(p) assign the Association's right to future income, including the right to receive Assessments;

(q) by resolution, establish committees of the Board of Managers and/or Unit Owners, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee;

(r) exercise any other powers conferred by this Declaration or the Bylaws;

(s) exercise any other power that may be exercised in Colorado by legal entities of the same type as the Association; and

(t) exercise any other power necessary and proper for the governance and operation of the Association.

Section 9.3 Actions by Board of Managers. Except as specifically otherwise provided in this Declaration, the Bylaws or the Act, the Board of Managers may act in all instances on behalf of the Association.

Section 9.4 Board of Managers Meetings. All meetings of the Board of Managers, at which action is to be taken by vote, will be open to the Unit Owners, and agendas for meetings of the Board of Managers shall be made reasonably available for examination by all members of the Association or their representatives, except that meetings of the Board of Managers may be held in executive session(s), without giving notice and without the requirement that they be open to Unit Owners, in the following situations:

(a) matters pertaining to employees of the Association or involving the employment, promotion, discipline or dismissal of an officer, agent, or employee of the Association;

(b) consultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

(c) investigative proceedings concerning possible or actual criminal misconduct;

(d) matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;

(e) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.

Section 9.5 Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "notice and hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Managers, a committee, an officer, the Managing Agent, etc.) shall give notice of the proposed action to all Unit Owners whose interests the proposing party reasonably determines would be significantly affected by the proposed action. The notice shall be delivered personally or mailed not less than three (3) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both, subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit Owner having a right to notice and hearing shall have the right to appeal to the Board of Managers from a decision of a proposing party other than the Board of Managers by filing a written notice of appeal with the Board of Managers within ten (10) days after being notified of the decision. The Board of Managers shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 9.6 Payments to Working Capital Account. In order to provide the Association with adequate working capital funds, the Association may collect from purchasers at the time of the initial sale of each Unit by Declarant an amount equal to three months' worth of annual Assessments based on the Association's budget in effect at the time of the sale. Such payments to this fund shall not be considered advance payments of annual Assessments.

## ARTICLE 10. ASSESSMENTS

Section 10.1 Commencement of Annual Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After any Assessment has been made by the Association, Assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the Association.

Section 10.2 Annual Assessments. The Association shall levy annual Assessments to pay for the Common Expenses Liability allocated to each Unit pursuant to this Declaration. The total annual Assessments shall be based upon a budget of the Association's cash requirements for upkeep of the Condominium Project including maintenance, repair and replacement of the Common Elements as required by the Act and the Condominium Documents. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be credited to the Unit Owners in proportion to their Common Expenses Liability or credited to them to reduce their future Assessments for Common Expenses.

Section 10.3 Apportionment of Annual Assessments. The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion to their Percentage of Common Expenses Liability set forth on Exhibit B, subject to: (a) Common Expenses which are separately metered or assessed to the Units by third parties; (b) Common Expenses associated with the maintenance, repair or replacement of Limited Common Elements which shall be assigned equally or on such other equitable basis as the Board of Managers shall determine, to the Units to which the specific Limited Common Elements are appurtenant; (c) Common Expenses or portions thereof benefiting fewer than all of the Units which shall be assessed exclusively against the Units benefited;

(d) any increased cost of insurance based upon risk which shall be assessed to Units in proportion to the risk; (e) any Common Expense caused by the misconduct of any Unit Owner(s), which may be assessed exclusively or on such other equitable basis as the Board of Managers shall determine against such Unit Owner(s); and (f) any expenses which are charged equally to the Units. All such allocations of Common Expenses Liability to Units on a basis other than the Units' Percentage of Common Expenses Liability shall be made by the Board of Managers. So long as Unit 30 is in fact used as a cell site for telecommunications systems, such Unit shall not be benefited by most of the services provided and therefore shall not be assessed for water, trash removal, snow removal, and any other such operational expenses.

Section 10.4 Special Assessments. In addition to the annual Assessments authorized above, the Board of Managers may at any time and from time to time determine, levy, and assess in any fiscal year a special Assessment applicable to that particular fiscal year (and for any such longer period as the Board of Managers may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses of any construction, reconstruction, repair, demolishing, replacement, renovation or maintenance of the Condominium Project, specifically including any fixtures and personal property related to it. Any amounts determined, levied, and assessed pursuant to this Declaration shall be assessed to the Units pursuant to the provisions in Section 10.3 entitled "Apportionment of Annual Assessments" set forth above.

Section 10.5 Due Dates for Assessment Payments. Unless otherwise determined by the Board of Managers, the Assessments which are to be paid in installments shall be paid monthly in advance and shall be due and payable to the Association at its office or as the Board of Managers may otherwise direct in any Management Agreement, without notice (except for the initial notice of any special Assessment), on the first day of each month. If any such installment shall not be paid within 30 days after it shall have become due and payable, then the Board of Managers may assess a late charge, default interest charge (not to exceed the rate from time to time allowed by the Act), fee, or such other charge as the Board of Managers may fix by rule from time to time to cover the extra expenses involved in handling such delinquent Assessment installment. A Unit Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period. However, if the Common Expenses Liability is reallocated, any installment of an Assessment not yet due shall be recalculated in accordance with the reallocated Common Expenses Liability.

Section 10.6 Default Assessments. All Costs of Enforcement assessed against a Unit Owner pursuant to the Condominium Documents, or any expense of the Association which is the obligation of a Unit Owner pursuant to the Condominium Documents shall become a default Assessment assessed against the Unit Owner's Unit. Notice of the amount and demand for payment of such default Assessment shall be sent to the Unit Owner prior to enforcing any remedies for non-payment hereunder.

Section 10.7 Covenant of Personal Obligation for Assessments. Declarant, by creating the Units pursuant to this Declaration, and all other Unit Owners, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), are deemed to personally covenant and agree, jointly and severally, with all other Unit Owners and with the Association, and hereby do so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, and (c) default Assessments applicable to the Unit Owner's Unit. No Unit Owner may waive or otherwise escape personal liability

for the payment of the Assessments provided for in this Declaration by not using the Common Elements or the facilities contained in the Common Elements or by abandoning or leasing his Unit.

Section 10.8 First Mortgagees May Pay Assessments and Cure Defaults. If any Assessment on a Unit shall not be paid by the Owner thereof within sixty (60) days after the same is due, or if a default by any Owner of any provision of this Declaration, the Articles or Bylaws of the Association, shall not be cured within sixty (60) days after written notice thereof is given to such Owner, then any First Mortgagee may (but shall not be required to) pay such Assessment and may (but shall not be required to) cure any such default.

Section 10.9 Lien for Assessments; Assignment of Rents. The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of the Condominium Documents shall be burdens running with, and a perpetual lien in favor of the Association upon the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association shall prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Rules and Regulations, the name of the Unit Owner or Unit Owners of the Unit, and any and all other information that the Association may deem proper. The lien notice shall be signed by a member of the Board of Managers, an officer of the Association, or the Managing Agent and shall be recorded in the Records. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied. Upon any default in the payment of annual, special, or default Assessments, the Association shall also have the right to appoint a receiver to collect all rents, profits, or other income from the Unit payable to the Unit Owner and to apply all such rents, profits, and income to the payment of delinquent Assessments. Each Unit Owner, by ownership of a Unit, agrees to the assignment of such rents, profits and income to the Association effective immediately upon any default in the payment of annual, special, or default Assessments.

Section 10.10 Remedies for Nonpayment of Assessments. If any annual, special, or default Assessment (or any installment of the Assessment) is not fully paid within 30 days after the same becomes due and payable, then as often as the same may happen, (a) interest shall accrue at the default rate set by the Rules and Regulations on any amount of the Assessment in default, accruing from the due date until date of payment, (b) the Association may declare due and payable all unpaid installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (c) the Association may thereafter bring an action at law or in equity, or both, against any Unit Owner personally obligated to pay the same, (d) the Association may proceed to foreclose its lien against the particular Unit pursuant to the power of sale granted to the Association by this Declaration or in the manner and form provided by Colorado law for foreclosure of real estate mortgages and (e) the Association may suspend the Owner's right to vote in Association matters until the Assessment is paid. An action at law or in equity by the Association (or counterclaims or cross-claims for such relief in any action) against a Unit Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid in or purchase any Unit at

foreclosure or other legal sale and to acquire and hold, lease, mortgage, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 10.11 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Unit Owner to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all purchasers shall be jointly and severally liable with the prior Unit Owner(s) for any and all unpaid Assessments against such Unit, without prejudice to any such purchaser's right to recover from any prior Unit Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date the purchaser becomes the Unit Owner of a Unit. For Assessment purposes, the date a purchaser becomes the Unit Owner shall be determined as follows: (a) in the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Unit Owner shall be deemed to be upon the expiration of all applicable redemption periods; (b) in the event of a conveyance or transfer by deed in lieu of foreclosure a purchaser shall be deemed to become the Unit Owner of a Unit upon the execution and delivery of the deed or other instruments conveying or transferring title to the Unit, irrespective of the date the deed is recorded; and (c) in the event of conveyance or transfer by deed, a purchaser shall be deemed to become the Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Unit, irrespective of the date the deed is recorded. However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions of this Declaration.

Section 10.12 Waiver of Homestead Exemption: Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Unit Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;
- (b) liens recorded prior to this Declaration unless otherwise agreed by the parties thereto; and
- (c) the lien of any First Mortgagee except to the extent the Act grants priority for Assessments to the Association.

Any First Mortgagee who acquires title to a Unit by virtue of foreclosing a 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, will take the Unit free of any claims for unpaid Assessments and Costs of Enforcement against the Unit which accrue prior to the time such First Mortgagee acquires title to the Unit except to the extent the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense and except to the extent the Act grants lien priority for Assessments to the Association. All other persons not holding liens described in this Section and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's lien for Assessments

and Costs of Enforcement as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or other transfer of any Unit, (a) except as provided above with respect to First Mortgagees, (b) except in the case of foreclosure of any lien enumerated in this Section, and (c) except as provided in the next Section, shall not affect the Association's lien on such Unit for Assessments due and owing prior to the time such purchaser acquired title and shall not affect the personal liability of each Unit Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 10.13 Statement of Status of Assessments. On or before 14 calendar days after receipt of written notice to the Managing Agent or, in the absence of a Managing Agent, to the Board of Managers and payment of a reasonable fee set from time to time by the Board of Managers, any Unit Owner, holder of a Security Interest, prospective purchaser of a Unit or their designees shall be furnished a statement of the Unit Owner's account setting forth:

- (a) the amount of any unpaid Assessments then existing against a particular Unit;
- (b) the amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- (c) the date(s) for payment of any installments of any special Assessments outstanding against the Unit; and
- (d) any other information, deemed proper by the Association, including the amount of any delinquent Assessments created or imposed under the terms of this Declaration.

Upon the issuance of such a certificate signed by a member of the Board of Managers, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith.

Section 10.14 Liens. Except for Assessment liens as provided in this Declaration, mechanics' liens (except as prohibited by this Declaration), tax liens, judgment liens and other liens validly arising by operation of law and liens arising under Security Interests, there shall be no other liens obtainable against the Common Elements or against the interest of any Unit Owner in the Common Elements except a Security Interest in the Common Elements granted by the Association pursuant to the requirements of the Act.

## ARTICLE 11. MAINTENANCE RESPONSIBILITY

Section 11.1 Unit Owner's Rights and Duties with Respect to Interiors. Except as may be provided in the purchase and sale agreement or other conveyancing documents executed by Declarant in connection with sales to initial purchasers of the Units, each Unit Owner of a Unit shall have the exclusive right and duty to paint, tile, wax, paper, or otherwise decorate or redecorate and to maintain and repair the interior surfaces of the walls, floors, ceilings, windows and doors forming the

boundaries of such Unit Owner's Unit and all walls, floors, ceilings, and doors within such boundaries. Notwithstanding the foregoing, no Unit Owner shall be permitted to install any hardwood floor or other hard surface improvements in his Unit that might affect adjoining Units by increasing noise or vibrations, without the prior written approval of the Association, which approval may be denied, or conditioned, in the Association's sole discretion.

Section 11.2 Responsibility of the Unit Owner. The Unit Owner of any Unit shall, at the Unit Owner's expense, maintain and keep in repair all fixtures, equipment, and utilities installed and included in a Unit commencing at a point where the fixtures, equipment, and utilities enter the Unit. A Unit Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of the Improvement(s), or impair any easement or hereditament. Subject to the Association's overall responsibility for maintenance of the Limited Common Elements, each Unit Owner shall be responsible for routine maintenance and care of the walls, floors, ceilings, windows and doors of any balcony or of any other Limited Common Elements appurtenant to the Unit Owner's Unit, and for keeping the same in a good, clean, sanitary, and attractive condition.

Section 11.3 Unit Owner's Negligence. In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements is caused through or by the negligent or willful act or omission of a Unit Owner or Occupant, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Unit Owner; and, if the Unit Owner fails to repay the expenses incurred by the Association within seven days after notice to the Unit Owner of the amount owed, then the failure to so repay shall be a default by the Unit Owner, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with this Declaration.

Section 11.4 Responsibility of the Association. The Association, without the requirement of approval of the Unit Owners, shall maintain and keep in good repair, replace, and improve, as a Common Expense, all of the Condominium Project not required in this Declaration to be maintained and kept in good repair by a Unit Owner or by Declarant.

## ARTICLE 12. MECHANICS' LIENS

Section 12.1 Mechanics' Liens. Subsequent to recording of this Declaration and the filing of the Map in the Records, no labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Unit Owner or the Unit Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against a Unit of any other Unit Owner not expressly consenting to or requesting the same, or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien or for labor performed or for materials furnished in work on such Unit Owner's Unit, against the Unit of another Unit Owner or against the Common Elements, or any part thereof.

Section 12.2 Enforcement by the Association. At its own initiative or upon the written request of any Unit Owner (if the Association determines that further action by the Association is

proper), the Association shall enforce the indemnity provided by the provisions of this Article 12 by collecting from the Unit Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanics' lien, to pay all costs and reasonable attorneys' fees incidental to the lien, and to obtain a release of such lien. If the Unit Owner of the Unit on which the labor was performed or materials furnished refuses or fails to indemnify within five (5) days after the Association shall have given notice to such Unit Owner of the total amount of the claim, then the failure to so indemnify shall be a default by such Unit Owner under the provisions of this Section 12.2, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association pursuant to this Declaration.

### ARTICLE 13. USE RESTRICTIONS

Section 13.1 Use of Units. Except for uses reserved to Declarant in Article 15 entitled "Special Declarant Rights and Additional Reserved Rights", if any, and except for Unit 30 that may be used as a cell site for telecommunications systems, all Units shall be used for dwelling purposes only. Unit Owners of the Units may rent or lease such Units to others for these purposes, subject to Section 13.4 and may use these Units for home occupations which do not cause unreasonable disturbance to other Unit Owners and which are permitted by applicable zoning codes. The Association may establish Rules and Regulations that limit the number of Occupants of a Unit.

Section 13.2 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements by any Unit Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Elements by any Unit Owner without the prior written approval of the Association.

Section 13.3 Leases. The term "lease" as used herein shall include any agreement for the leasing or rental of a Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Unit shall have the right to lease his Unit under the following conditions:

(a) All leases shall be in writing and a copy of the lease or lease form shall be delivered to the Board of Managers of the Association or the Association's managing agent (with the economic terms of such lease deleted by the Owner, if so desired) prior to the effective date of the lease.

(b) All leases shall provide that the terms of the lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws, and Rules and Regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. Any lease or lessee that violates the provisions of this Declaration or rules and regulations adopted by the Board of the Association shall be deemed in default and the Association may bring an action to terminate such lease and the lessee's occupancy of the premises.

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

Section 13.4 Prohibition of Increases in Insurable Risks and Certain Activities. 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 Condominium Project or in an increase in the rate of the insurance on all or any part of the Condominium 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 having jurisdiction over the Condominium Project. No damage to or waste of the Common Elements shall be committed by any Unit Owner, or Occupant, and each Unit Owner shall indemnify and hold the Association and the other Unit Owners harmless against all loss resulting from any such damage or waste caused by him or an Occupant of his Unit. Failure to so indemnify shall be a default by such Unit Owner under this Section. At its own initiative or upon the written request of any Unit Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment levied against such Unit.

Section 13.5 Structural Alterations and Exterior Appearance. No structural alterations to any Unit, including the construction of any additional skylight, window, door or other alteration visible from the exterior of the Unit, or to any Common Element shall be made or caused to be made by any Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and thereafter the Association. No window coverings or other improvements, alterations or decorations visible from outside a Unit shall be added by a Unit Owner without the prior written approval of the Declarant during the Period of Declarant Control and thereafter the Association. No alteration or subdivision of Units or relocation of boundaries between adjoining Units shall be made by the Unit Owners without the prior written approval of the Declarant during the Period of Declarant Control and thereafter by the Association. The Association shall promulgate Rules and Regulations establishing procedures for the approvals required by this Section 13.5. Such Rules and Regulations shall include, but shall not be limited to, requirements that the applicant submit plans and specifications showing the nature, kind, shape, height, color, materials and location of the proposed alterations in sufficient detail for the Association and Declarant to review them, processing and/or review fees, which may include any professional fees the Association or Declarant might incur in retaining architects or engineers to review the plans and specifications. The Rules and Regulations shall specifically consider the impact of the alteration on the harmony of external design and location in relation to surrounding structures and topography.

Section 13.6 Pets; Use Restrictions. No animal pens, sheds, fences or other outbuildings or structures of any kind shall be erected by any Unit Owner. No activity shall be allowed which interferes unduly with the peaceful possession and proper use of the Condominium Project by the Unit Owners, nor shall any fire hazard or unsightly accumulation of refuse be allowed. No lights shall be emitted which are unreasonably bright or cause unreasonable glare; no sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is nauseous or offensive to others. No animals, birds, insects, or livestock of any kind shall be raised, bred, or kept on or in the Condominium Project, except properly licensed and certified service animals for disabled persons shall be allowed on the Property, and except Owners may keep one domesticated dog, cat, or other household pet per Unit which weighs less than thirty pounds and which does not unreasonably interfere with the use and enjoyment of the Condominium Project by others. The Board may establish reasonable time restrictions on uses and activities in the Project that may disturb Owners' use and enjoyment of their Units because of noise, odors, or other factors.

Section 13.7 Limit on Timesharing. No Unit Owner shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior

written approval of the Declarant during the Period of Declarant Control, and thereafter the Association.

Section 13.8 Restriction on Signs. No signs, billboards, posterboards, or advertising structure of any kind shall be displayed, erected or maintained for any purpose whatsoever except such signs as have been approved by the Declarant during the Period of Declarant Control, and thereafter the Association. Any signs which are permitted under the foregoing restrictions shall be erected or maintained on the Condominium Project only with the prior written approval of the Declarant during the Period of Declarant Control, and thereafter the Association, which approval shall be given only if such signs are of attractive design and as small a size as reasonably possible and shall be placed or located as directed or approved by the Association.

Section 13.9 Restrictions on Use of Parking and Storage Areas. No parking shall be permitted at any location on the Property unless specifically designated for parking by the Association. No storage is permitted outside of Units except in specifically designated storage areas. No Owner may use any parking or storage space assigned to another. No Owner may use any parking space for storage or use any parking or storage space in any manner that obstructs or interferes with any other Owner's parking or storage rights or that constitutes a safety hazard. Without limiting the generality of the powers of the Association with respect to parking or storage, the Association is specifically authorized, but not obligated, to remove any vehicle parked in any area not designated for parking, or any vehicle parked in any space that is assigned to another person or reserved for a specific use, or any vehicle parked in an obstructing or hazardous manner, or to remove any improperly stored or hazardous materials, in either case at the expense of the Owner or Occupant that owns such vehicle or materials. Expenses incurred by the Association in connection with such removal (and storage, if necessary) shall be a personal obligation of such Owner and, if the Owner fails to pay such amount within seven (7) days after notice to the Owner of the amount owed, then the failure to pay shall be a default by the Owner and such expenses shall automatically become a default Assessment determined and levied against such Unit enforceable by the Association as provided in this Declaration.

Section 13.10 Garbage Collection. Each Owner shall dispose of the garbage collected within his Unit into containers of such dimensions and at such locations as the Association shall from time to time designate.

## ARTICLE 14. EASEMENTS

Section 14.1 Easement of Enjoyment. Every Unit Owner shall have a non-exclusive easement for the use and enjoyment of the Common Elements, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article 14 and the easements and restrictions set forth in Article 7 entitled "Unit Owners' Property Rights in Common Elements".

Section 14.2 Delegation of Use. Any Unit Owner may delegate, in accordance with the Condominium Documents, the Unit Owner's right of enjoyment in the Common Elements to an Occupant of the Unit Owner's Unit.

Section 14.3 Recorded Easements. The Property shall be subject to any easements as shown on any recorded plat affecting the Property, and as shown on the recorded Map and as reserved or granted under this Declaration. The recording data for recorded easements and licenses appurtenant to

or included in the Property or to which any part of the Property may become subject is set forth on the attached Exhibit C.

Section 14.4 Easements for Encroachments. The Condominium Project, and all portions of it, are subject to easements hereby created for encroachments between Units and the Common Elements as follows:

(a) in favor of all Unit Owners so that they shall have no legal liability when any part of the Common Elements encroaches upon a Unit;

(b) in favor of each Unit Owner so that the Unit Owner shall have no legal liability when any part of his Unit encroaches upon the Common Elements or upon another Unit; and

(c) in favor of all Unit Owners, the Association, and the Unit Owner of any encroaching Unit for the maintenance and repair of such encroachments.

Encroachments referred to in this Section 14.4 include, but are not limited to, encroachments caused by error or variance from the original plans in the construction of the Improvements or any Unit constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the Condominium Project. Such encroachments shall not be considered to be encumbrances upon any part of the Condominium Project; provided, however, that encroachments created by the intentional act of a Unit Owner shall not be deemed to create an easement on the Property and shall be considered an encroachment upon the Condominium Project. Such encroachment shall be removed at Unit Owner's expense immediately upon notice from the Association. In the event such encroachment is not timely removed, the Association may effect removal of the encroachment and the expense thereof shall be a default Assessment to the Unit Owner.

Section 14.5 Utility Easements. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such utilities to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of other utilities, the Unit Owners, the Association, and Declarant; shall complete its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by this general easement request a specific easement by separate recordable document, Declarant during the Period of Declarant Control and thereafter the Association, shall have the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 14.5 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 14.6 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 14.7 Maintenance Easement. An easement is hereby granted to the Association and any Managing Agent and their respective officers, agents, employees and assigns upon, across, over, in, and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 14.8 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Unit Owners and the Association shall have the irrevocable right, to be exercised by the Association as the Unit Owners' agent, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Unless caused by the negligent or willful act or omission of a Unit Owner or Occupant, damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repair within another Unit at the instance of the Association or of the Unit Owners shall be a Common Expense.

Section 14.9 Easements Deemed Created. All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 14, even though no specific reference to such easements or to this Article 14 appears in the instrument for such conveyance.

## ARTICLE 15. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 15.1 Special Declarant Rights. Declarant hereby reserves the right, from time to time, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

(a) Completion of Improvements. The right to complete improvements indicated on Plats and Maps filed with this Declaration.

(b) Exercise of Development Rights. The right to exercise any Development Right reserved in Article 16 of this Declaration.

(c) Sales Management and Marketing. The right to locate, relocate, and maintain sales offices, management offices, signs advertising the Condominium Project and models within any Unit or Units and in the Common Elements. Declarant shall have the right to show Units and the Common Elements to prospective purchasers.

(d) Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Condominium Project.

(e) Master Association. The right to make the Condominium Project subject to a Master Association.

(f) Merger. The right to merge or consolidate a project with another project of the same form of ownership.

(g) Control of Association and Board of Managers. The right to appoint or remove any officer of the Association or any member of the Board of Managers.

(h) Amendment of Declaration. The right to amend this Declaration in connection with the exercise of any Development Rights.

(i) Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

(j) Signs. The right to maintain signs on the Common Elements advertising the Condominium Project.

(k) Post-Sales. The right to use the Common Elements to maintain customer relations and provide post-sale services to Unit Owners.

(l) Parking/Storage. The right to use and to allow others to use all parking and storage areas in connection with its marketing efforts.

Section 15.2 Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 15.1 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to streets, paths, walkways, skiways, drainage, recreation areas, parking areas, driveways, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Unit Owners within the Condominium Project.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Condominium Project for the benefit of the Unit Owners and/or the Association.

(c) Easement Rights. The rights to an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations arising under this Declaration or the Act.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 15.3 Limitations on Special Declarant Rights and Additional Reserved Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special

Declarant Right or Additional Reserved Rights may be exercised by the Declarant so long as the Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right; (c) owns any Unit; (d) holds a Security Interest in any Unit(s); or (e) for thirty (30) years after the date of recording this Declaration. Earlier termination of certain rights may occur pursuant to requirements of the Act.

Section 15.4 Interference with Special Declarant Rights. Neither the Association nor any Unit Owners may take any action or adopt any rule and/or regulation that will interfere with or diminish any Special Declarant Rights or Additional Reserved Rights without the prior written consent of the Declarant.

Section 15.5 Rights Transferable. Any Special Declarant Rights or Additional Reserved Right created or reserved under this Article 15 for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 16. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS

Section 16.1 Development and Withdrawal Rights. Declarant expressly reserves the right to create Units, Common Elements and Limited Common Elements (the "Additional Improvements") to combine Units, to subdivide Units, to convert Units into Common Elements, to convert Common Elements into Units, and to allocate Real Estate as Limited Common Elements on all or any portion of the Real Estate reserved for future development in this Declaration. Declarant may exercise any or all of the Development Rights so reserved at any time with respect to all or any of the Real Estate marked subject to Development Rights in the Declaration. No assurances are made with respect to the boundaries of any parcels that may be developed or the order in which the parcels may be developed. Exercise of a Development Right with respect to any one parcel does not require exercise of a Development Right on any other parcel of Real Estate subject to Development Rights. No assurances are made, however, that any further development will occur. Declarant expressly reserves the right to withdraw all or any portion of the Property that is designated as subject to withdrawal in this Declaration from the Condominium Project by recording a document evidencing such withdrawal in the Records; provided, however, that no portion of the Property may be withdrawn after a Unit in that portion of the Property has been conveyed to a purchaser. The Real Estate withdrawn from the Condominium Project shall be subject to whatever easements, if any, are reasonably necessary for access to or operation of the Condominium Project. Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement. The Declarant alone is liable for all expenses in connection with Real Estate subject to Development Rights.

Section 16.2 Amendment of Declaration. If Declarant elects to submit the or Additional Improvements to this Declaration, or to subdivide or to convert Units or Common Elements at such time as construction of the Improvements or the Additional Improvements are substantially complete, Declarant shall record an amendment to this Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Unit will be apportioned according to the total number of Units submitted to this Declaration. The Allocated Interests appurtenant to each Unit in the Condominium Project shall be based on formula set forth in Section 4.2.A. The Amendment to this Declaration shall contain at a minimum the legal description of the real estate on which the Additional Improvements

being submitted to this Declaration are located and a schedule of the Allocated Interests appurtenant to the Units in the Condominium Project.

Section 16.3 Supplement to the Map. Declarant shall, contemporaneously with the amendment of this Declaration, file a supplement to the Map showing the construction, combination, subdivision, conversion or allocation of Units or Common Elements allowed by this Article. The supplement to the Map shall substantially conform to the requirements contained in this Declaration.

Section 16.4 Interpretation. Recording of amendments to this Declaration and supplement to the Map in the Records shall automatically:

(a) vest in each existing Unit Owner the reallocated Allocated Interests appurtenant to his Unit; and

(b) vest in each existing holder of a Security Interest a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit.

Upon the recording of an amendment to this Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Property, as expanded. The Additional Improvements, shall be added to and become a part of the Project for all purposes. All conveyances of Units after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any amendment to this Declaration or supplement to the Map. Reference to this Declaration and Map in any instrument shall be deemed to include all amendments to this Declaration and supplements to the Map without specific reference thereto.

Section 16.5 Maximum Number of Units. The maximum number of Units in the Condominium Project shall not exceed 30 Units or, if allowed by the Act, the maximum number of Units allowed by any governmental entity having jurisdiction over the Property. Declarant shall not be obligated to expand the Condominium Project beyond the number of Units initially submitted to this Declaration.

Section 16.6 Construction Easement. Declarant expressly reserves the right to perform warranty work, and repairs and construction work and to store materials in secure areas, in Units and in Common Elements, and the future right to control such work and repairs, and the right of access thereto, until its completion. All work may be performed by Declarant without the consent or approval of any Unit Owner or First Mortgagee or holder of a Security Interest. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Property not designated as reserved for future development in this Declaration or on the Map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on any of the Property reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements not occupied by an Improvement containing Units. If Declarant grants any such easements, Exhibit C to this Declaration will be amended to include reference to the recorded easement.

Section 16.7 Reciprocal Easements. If property is withdrawn from the Condominium Project ("Withdrawn Property"):

(a) the owner(s) of the Withdrawn Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Condominium Project; and

(b) the Unit Owner(s) in the Condominium Project shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Withdrawn Property.

Declarant shall prepare and record in the Records whatever documents are necessary to evidence such easements and shall amend Exhibit C to this Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the owner(s) of the Withdrawn Property and the Unit Owners in the Condominium Project shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section 16.8 shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section 16.8.

Section 16.8 Termination of Development Rights. The Development Rights reserved to Declarant, for itself, its successors and assigns, shall expire thirty (30) years after the date of recording this Declaration in the Records, unless the Development Rights are reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Board of Managers may impose on the subsequent exercise of the Development Rights by Declarant. Declarant may at any time release and relinquish some or all of the Development Rights with respect to all or any part of the Real Estate subject to such rights by instrument executed by Declarant and effective when recorded in the Records. Upon the expiration or other termination of the Development Rights, any Real Estate then subject to such rights shall become Common Elements or Units, as applicable.

Section 16.9 Interference With Development Rights. Neither the Association nor any Unit Owner may take any action or adopt any rule or regulation that will interfere with or diminish any Development Rights reserved by this Article 16 without the prior written consent of the Declarant.

Section 16.10 Transfer of Development Rights. Any Development Rights created or reserved under this Article 16 for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the Records. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 17. INSURANCE

Section 17.1 Coverage. Commencing not later than the first conveyance of a Unit to a purchaser and to the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Managers determines that any insurance described herein will not be maintained, the Board of



Managers shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and Eligible First Mortgagees at their respective last known addresses.

(a) Property Insurance. The Association shall maintain property insurance on the Condominium Project for broad form covered causes of loss in amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies.

(b) Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Condominium Project, insuring the Board of Managers, the Association, the Managing Agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and member of the Board of Managers. Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against the other insured parties.

(c) Fidelity Insurance. The Association shall maintain fidelity insurance on all persons who control or disburse funds of the Association. Coverage shall not be less in the aggregate than two months' current Assessments plus reserves, as calculated from the current budget of the Association. Any person employed as an independent contractor by the Association, including the Managing Agent must obtain and maintain fidelity insurance in like amount for the benefit of the Association unless the Association names such person as an insured employee in the policy of fidelity insurance specified above.

(d) Other Insurance. The Board of Managers may also procure insurance against such additional risks of a type normally carried with respect to properties of comparable character and use that the Board of Managers deems reasonable and necessary in order to protect the Condominium Project, the Association and the Unit Owners.

(e) Unit Owners' Policies. Each Unit Owner may obtain additional insurance at his own cost for his own benefit so long as all such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be effected or diminished by reason of any such insurance carried by any Unit Owner.

Section 17.2 Required Provisions. All insurance policies carried pursuant to the requirements of this Article 17 must provide that:

(a) each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

(b) the insurer waives its rights to subrogation under the policy against any Unit Owner or member of his household;

(c) no act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy;

(d) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the risks covered by the policy, the Association's policy provides primary insurance;

(e) any loss covered by the policies must be adjusted with the Association;

(f) the insurance proceeds for any loss shall be payable to an insurance trustee designated for that purpose, or otherwise to the Association and not to any holder of a Security Interest;

(g) the insurer shall issue certificates or memoranda of insurance to the Association and, upon request, to any Unit Owner or holder of a Security Interest; and

(h) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and any Unit Owner(s) and holder(s) of Security Interests to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 17.3 Adjustment of Claims. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles a property insurance claim, it shall have the authority to assess negligent Unit Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event more than one Unit is damaged by a loss, the Association in its reasonable discretion may assess each Unit Owner a prorata share of any deductible paid by the Association.

## ARTICLE 18. RESTORATION UPON DAMAGE OR DESTRUCTION

Section 18.1 Duty to Restore. Any portion of the Condominium Project for which insurance is required under the Act or for which insurance carried by the Association is in effect, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(a) the Condominium Project is terminated;

(b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;

(c) sixty seven percent (67%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild; or

(d) prior to the conveyance of any Unit to a purchaser, the holder of a Security Interest on the damaged portion of the Condominium Project rightfully demands all or a substantial part of the insurance proceeds.

In the event the Condominium Project is not repaired or replaced as allowed by Subparagraphs (a), (b) and (c) above, then the Real Estate in the Condominium Project shall be sold and the proceeds distributed pursuant to the procedures provided for in the Act for termination of condominium projects.

Section 18.2 Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 18.3 Plans. The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Managers and a Majority of Owners.

Section 18.4 Replacement of Less Than Entire Property. If the entire Condominium Project is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium Project and, except to the extent that other persons will be distributees:

(a) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Unit Owner of the Unit and the Unit Owner of the Unit to which the Limited Common Elements were allocated, or to holders of Security Interests, as their interests may appear;

(b) the remainder of the proceeds must be distributed to each Unit Owner or holders of Security Interests, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all the Units; and

(c) if the Unit Owners vote not to rebuild a Unit, the Allocated Interests of the Unit are reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations.

Section 18.5 Insurance Proceeds. The insurance trustee, or if there is no insurance trustee, then the Board of Managers, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and holders of Security Interests as their interest may appear. Subject to the provisions of the Sections above, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and the Association, Unit Owners and holders of Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the Condominium Project is terminated, in which event the surplus proceeds will be distributed as provided in this Declaration and the Act.

Section 18.6 Certificates by the Board of Managers. The insurance trustee, if any, may rely on the following certifications in writing made by the Board of Managers:

(a) whether or not damaged or destroyed Property is to be repaired or restored;  
and

(b) the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 18.7 Certificates by Attorneys or Title Insurance Companies. If payments are to be made to Unit Owners or holders of Security Interests, the Board of Managers, and the insurance trustee, if any, shall obtain and may rely on a title insurance company or attorney's certificate of title or a title insurance policy based on a search of the Records from the date of recording of this Declaration stating the names of the Unit Owners and the holders of Security Interest.

## ARTICLE 19. CONDEMNATION

If all or part of the Condominium Project is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the provisions on eminent domain in the Act.

## ARTICLE 20. MORTGAGEE PROTECTIONS

Section 20.1 Introduction. This Article 20 establishes certain standards and covenants, which are for the benefit of First Mortgagees. This Article 20 is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

Section 20.2 Percentage of First Mortgagees. Unless specifically provided otherwise, wherever in this Declaration the approval or consent of a specified percentage of Eligible First Mortgagees is required, it shall mean the approval or consent of sixty-seven percent (67%) of Eligible First Mortgagees. Each Eligible First Mortgagee shall be entitled to one vote for each Security Interest held by such Eligible First Mortgagee.

Section 20.3 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each Eligible First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for sixty (60) days by a Unit Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of Eligible First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

Section 20.4 Member and First Mortgagee Approval. Subject to Sections herein to the contrary and to the rights of Declarant provided for herein, the Association shall not:

(a) Unless it has obtained the prior written consent of members holding at least sixty-seven percent (67%) of the votes in the Association and sixty-seven percent (67%) of the Eligible First Mortgagees (based on one vote for each First Mortgage held):

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

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

(B) in the case of a taking by condemnation or eminent domain.

(ii) except as otherwise permitted in this Declaration, change the pro rata interest or obligations of any individual Unit for the purpose of:

(A) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or

(B) determining the pro rata share of ownership of each Condominium Unit in the Common Elements.

(iii) except in accordance with any greater than sixty-seven percent (67%) voting requirements for Owners as set forth in this Declaration or in Section 38-33.3-312 of the Act, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements (excluding the granting or permits, licenses and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Project):

(iv) partition or subdivide any Unit; or

(v) use hazard insurance proceeds for losses to any part of the Project (whether to Units or Common Elements) for other than the repair, replacement, or reconstruction of such condominium property in accordance with the procedures set forth in Article 17, except as may be provided by statute in the case of substantial loss to such Units and/or Common Elements.

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

(i) voting rights;

(ii) increases in Assessments that raise the previously-assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

(iii) reductions in reserves for maintenance, repair, and replacement of the Common Elements;

- (iv) responsibility for maintenance and repair of any portion of the Project;
- (v) reallocation of interests in the Common Elements, or rights to use of the Common Elements, except as specifically contemplated under other Sections;
- (vi) other than the partitioning or subdivision of any Unit as provided in otherwise provided, redefinition of the boundaries of any Unit;
- (vii) convertibility of Units into Common Elements or of common Elements into Units;
- (viii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) insurance, including, but not limited to, fidelity bonds;
- (x) imposition of any restrictions on leasing of Units;
- (xi) imposition of any restriction on the right of any Owner to use his Unit or the Common Elements or to sell or transfer its Unit;
- (xii) any decision by the Association to assume self-management of the Association, when professional management has previously been required by this Declaration or by any Eligible First Mortgagee or any insurer or guarantor of a First Mortgage;
- (xiii) any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration, the Articles, and Bylaws of the Association;
- (xiv) any action to terminate the legal status of the Project; or
- (xv) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages.

Section 20.5 Notice of Objection. Unless an Eligible First Mortgagee provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of Eligible First Mortgagees within thirty (30) days following the receipt of notice of such proposed amendment or action, the Eligible First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

Section 20.6 First Mortgagees' Rights.

(a) Advances. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Elements. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

(b) Cure Rights. First Mortgagees shall be entitled to cure any delinquency of the Unit Owner encumbered by a First Mortgage in the payment of Assessments. In that event, the First

Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 20.7 Limitations on First Mortgagee's Rights. No requirement for approval or consent by a First Mortgagee provided in this Article 20 shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Unit Owners or the Board of Managers;

(b) prevent the Association or Board of Managers from commencing, intervening and/or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of Article 18 entitled "Restoration Upon Damage or Destruction".

Section 20.8 Special Declarant Rights. No provision or requirement of this Article 20 entitled "Mortgagee Protections" shall apply to any Special Declarant Rights reserved to Declarant in this Declaration.

## ARTICLE 21. DURATION OF COVENANTS; AMENDMENT AND TERMINATION

Section 21.1 Term. This Declaration and any amendments or supplements to it shall remain in effect from the date of recordation for a period of fifty (50) years. Thereafter, this Declaration shall be automatically extended for five (5) successive periods of ten (10) years each, unless otherwise terminated or modified as provided in this Article.

Section 21.2 Amendment of Declaration. Except to the extent that this Declaration and the Act expressly permit or require amendments that may be executed by the Declarant or by the Association, and subject to the applicable requirements of Article 20 with respect to approval by Eligible First Mortgagees, this Declaration (including the Map) may be amended only by a vote or agreement of Unit Owners to which more than fifty percent (50%) of the votes in the Association are allocated. Notwithstanding the foregoing, no amendment may create or increase Special Declarant Rights, increase the number of Units or change the boundaries of any Unit or the Allocated Interests of a Unit in the absence of a vote or agreement of the Unit Owners to which at least sixty seven percent (67%) of the votes of the Association, including sixty seven percent (67%) of the votes allocated to Units not owned by Declarant, are allocated, except to the extent otherwise permitted or required by this Declaration or the Act. Notwithstanding the foregoing, no amendment may change the uses to which any Unit is restricted in the absence of a vote or agreement of Unit Owners to which at least sixty seven percent (67%) of the votes of the Association are allocated, except to the extent otherwise permitted or required by this Declaration or the Act.

Section 21.3 Special Amendment. To the extent allowed by the Act, Declarant hereby reserves and is granted the right and power to record, without the approval or consent of any Owner, First Mortgagee, or any other person or entity, special amendments to this Declaration, the Articles, and/or Bylaws of the Association, at any time prior to the conveyance by a Declarant of all Units to Owners (other than a Declarant) or ten (10) years after the date this Declaration is recorded in the City

and County of Denver, Colorado, whichever occurs first, in order to comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

Section 21.4 Execution of Amendments: Expenses. Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (A) any Unit Owners desiring an amendment as provided for in this Declaration or the Act; (B) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; and (C) in all other cases by the Association as a Common Expense.

Section 21.5 When Modifications Permitted. Notwithstanding the provisions of Section 21.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 21.6 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article 21 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Unit Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable) were obtained and are on file in the office of the Association. The amendment must be indexed in the grantee's index in the name of the Condominium Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

Section 21.7 Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Unit Owners or the Association as a condition to the effectiveness of those actions as provided in Article 20 entitled "Mortgagee Protections".

Section 21.8 Termination of the Condominium Project. The Condominium Project may only be terminated as provided in the Act.

## ARTICLE 22. MISCELLANEOUS

Section 22.1 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Condominium Documents shall be through any proceedings at law or in equity brought by any aggrieved Unit Owner, the Association, or Declarant against the Association or any Unit Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 22.2 Nonwaiver. Failure by Declarant, the Association, or any Unit Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.



and County of Denver, Colorado, whichever occurs first, in order to comply with any requirements of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure, or guarantee one or more First Mortgages.

Section 21.4 Execution of Amendments: Expenses. Any amendment shall be prepared, executed and recorded either by the Declarant or by an officer of the Association designated for that purpose or, in the absence of a designation, by the President of the Association. All expenses associated with preparing and recording an amendment to this Declaration shall be the sole responsibility of (A) any Unit Owners desiring an amendment as provided for in this Declaration or the Act; (B) the Declarant, to the extent the right to amend this Declaration is reserved to the Declarant and exercised by the Declarant; and (C) in all other cases by the Association as a Common Expense.

Section 21.5 When Modifications Permitted. Notwithstanding the provisions of Section 21.2 above, no amendment or termination of this Declaration shall be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained.

Section 21.6 Recording of Amendments. Any amendment to this Declaration made in accordance with this Article 21 shall be immediately effective upon the recording of the executed amendment in the Records together with a duly authenticated certificate of the Declarant or the Secretary of the Association stating that the required vote of Unit Owners, if any, and required consents of First Mortgagees (and/or Eligible First Mortgagee, as applicable) were obtained and are on file in the office of the Association. The amendment must be indexed in the grantee's index in the name of the Condominium Project and the Association and in the grantor's index in the name of each person or entity executing the Amendment.

Section 21.7 Rights of Eligible First Mortgagees. To the extent allowed by the Act, Eligible First Mortgagees shall have the rights to approve specified action of the Unit Owners or the Association as a condition to the effectiveness of those actions as provided in Article 20 entitled "Mortgagee Protections".

Section 21.8 Termination of the Condominium Project. The Condominium Project may only be terminated as provided in the Act.

## ARTICLE 22. MISCELLANEOUS

Section 22.1 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Condominium Documents shall be through any proceedings at law or in equity brought by any aggrieved Unit Owner, the Association, or Declarant against the Association or any Unit Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election.

Section 22.2 Nonwaiver. Failure by Declarant, the Association, or any Unit Owner or Eligible First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in the Condominium Documents shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 22.3 Severability. The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect. Any provision, which would violate the rule against perpetuities and the rule prohibiting unlawful restraints on alienation, shall be construed in a manner as to make this Declaration valid and enforceable.

Section 22.4 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 22.5 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 22.6 Conflicts in Legal Documents. In case of conflicts between the provisions in this Declaration and the articles of incorporation of the Association or the Bylaws, this Declaration shall control. In case of conflicts in the provisions in the articles of incorporation of the Association and the Bylaws, the articles of incorporation of the Association shall control.

Section 22.7 Vesting of Interests. Any interest in property granted under this Declaration shall vest, if at all, on or before the date of the death of the survivor of the now living children of Prince Charles, Prince of Wales, plus twenty-one years.

Section 22.8 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 22.9 Choice of Law. This Declaration shall be construed and interpreted in accordance with the laws of the State of Colorado.

Executed as of the 1<sup>st</sup> day of December, 1999.

BARKLEY HOBBS, LLC, a Colorado  
limited liability company

[SEAL]

By: *Michael G. Milstein*  
MICHAEL G. MILSTEIN, Manager

STATE OF COLORADO     )  
City of                    )  
COUNTY OF Denver    )     ss.

Subscribed to and sworn to before me this 1<sup>st</sup> day of December, 1999, by  
Michael G. Milstein, as \_\_\_\_\_,  
Manager.

Witness my hand and official seal.

*Peggy Sue Wells*  
NOTARY PUBLIC

My Commission Expires: 10/04/03



My Commission Expires 10/04/2003

Executed as of the 1<sup>st</sup> day of December, 1999.

BARKLEY HOBBS, LLC, a Colorado limited liability company

[SEAL]

By: *Michael G. Milstein*  
MICHAEL G. MILSTEIN Manager

STATE OF COLORADO )  
City of Denver ) ss.  
COUNTY OF Denver )

Subscribed to and sworn to before me this 1<sup>st</sup> day of December, 1999, by Michael G. Milstein, as \_\_\_\_\_, Manager.

Witness my hand and official seal.

*Peggy Sue Wells*  
NOTARY PUBLIC

My Commission Expires: 10/04/03



My Commission Expires 10/04/2003

**EXHIBIT A  
TO  
DECLARATION**

The land referred to in the Declaration is covering the land described as follows:

Lots 16, 17 and 18, East 8 feet of Lot 15, West 15 feet of Lot 19, Block 135, South Division of Capitol Hill, City and County of Denver, State of Colorado.

**EXHIBIT B  
TO  
DECLARATION**

**TABLE OF ALLOCATED INTERESTS**

Unit No.	Percentage share of Common Elements	Percentage share of Common Expenses	Vote in the affairs of Association
5	3.205	3.205	1
10	3.205	3.205	1
15	3.205	3.205	1
20	3.205	3.205	1
25	3.205	3.205	1
30	3.205	3.205	1
105	3.205	3.205	1
110	3.205	3.205	1
115	3.205	3.205	1
120	3.205	3.205	1
125	3.205	3.205	1
130	3.205	3.205	1
135	3.846	3.846	1
140	3.846	3.846	1
205	3.205	3.205	1
210	3.205	3.205	1
215	3.205	3.205	1
220	3.205	3.205	1
225	3.205	3.205	1
230	3.205	3.205	1
235	3.846	3.846	1
240	3.846	3.846	1
305	3.205	3.205	1
310	3.205	3.205	1
315	3.205	3.205	1
320	3.205	3.205	1
325	3.205	3.205	1
330	3.205	3.205	1
335	3.846	3.846	1
340	3.846	3.846	1

**EXHIBIT C  
TO  
DECLARATION**

**EASEMENTS AND LICENSES OF RECORD**

1. Cheeseman Park Mountain View Restriction Ordinance recorded August 19, 1968 in Book 9916 at Page 618.
2. Mile Hi Cablevision Agreement recorded February 11, 1983 in Book 2747 at Reception No. 69236.
3. Abstract of Lease between The Chisholm Company and Automatic Laundry Company recorded July 29, 1985 at Reception No. 044765.
4. Memorandum of Rooftop Lease Agreement between Milstein, Ltd., a Colorado general partnership and Denver Cellular Telephone Company, a Colorado general partnership recorded April 13, 1992 at Reception No. 92-0036860.

RECORDED  
ARTICLES OF INCORPORATION OF  
THE 925 EAST 8<sup>TH</sup> AVENUE CONDOMINIUM ASSOCIATION, INC.  
1999 DEC 17 10 50 AM  
SECRETARY OF STATE  
STATE OF COLORADO

In compliance with the requirements of the Colorado Revised Nonprofit Corporation Act, Article 30 of Title 7, Colorado Revised Statutes, as amended, the undersigned incorporator hereby acknowledges his intent to form a nonprofit corporation under and by virtue of said statute.

**ARTICLE 1. NAME**

The name of the corporation is The 925 East 8<sup>th</sup> Avenue Condominium Association, Inc. (the "Association"). The principal place of business shall be 925 East 8th Ave., Denver, Colorado, 80218.

**ARTICLE 2. PERIOD OF DURATION**

The Association shall exist in perpetuity from and after the date of filing of these Articles of Incorporation with the Colorado Secretary of State, unless dissolved according to Colorado law.

**ARTICLE 3. PURPOSES OF THE ASSOCIATION**

The Association does not contemplate pecuniary gain or profit of the members thereof. The primary purposes for which the Association is formed are (a) to provide for the operation, administration, use, and maintenance of certain common areas and other property more fully described under the Condominium Declaration for The 925 East 8<sup>th</sup> Avenue Condominium, as recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado, as amended or supplemented from time to time (the "Declaration"); (b) to preserve, protect, and enhance the values and amenities of such property; and (c) to promote the health, safety, and welfare of members of the Association.

**ARTICLE 4. DEFINITIONS**

Unless otherwise specified, capitalized terms used in these Articles of Incorporation shall have the same meanings as such terms have in the Declaration, except that the term "Board of Directors" as used herein shall have the same meaning as the term "Board of Managers" as used in the Declaration.

**ARTICLE 5. POWERS**

In furtherance of the purposes stated above, the Association shall have and may exercise all of the rights, powers, privileges, and immunities now or subsequently conferred upon nonprofit corporations organized under the laws of the State of Colorado, by the Colorado Common Interest



Ownership Act or granted under the Declaration.

#### ARTICLE 6. LIMITATION OF LIABILITY

No member of the Board of Directors of the Association shall have any liability to the Association or to its members for monetary damages for breach of fiduciary duty as a manager, except to the extent such exemption from liability is not permitted under the Colorado Revised Nonprofit Corporation Act or the Act. Any repeal or modification of the foregoing sentence shall not adversely affect any right or protection of a manager in respect of any act or omission occurring prior to such repeal or modification.

No member of the Board of Directors, or officer of the Association shall be personally liable for any injury to person(s) or property arising out of a tort committed by an employee except to the extent such exemption from liability is not permitted under the Colorado Revised Nonprofit Corporation Act.

#### ARTICLE 7. INDEMNIFICATION

The Association shall provide indemnification either directly or indirectly through insurance policies or otherwise, to the fullest extent permitted by law, for any individual who serves as a member of the Board of Directors, officer, employee, fiduciary or agent of the Association against liabilities and expenses asserted against or incurred by such individual in connection with holding such position. Such indemnification shall not extend, in any event, to any act or omission occurring prior to the date of incorporation of the Association.

Whenever such an individual seeks indemnification by the Association against any liability or expenses incurred in any threatened, pending or completed proceeding in which the individual is a party because he or she holds or has held any such position, the Association shall proceed diligently and in good faith to make a determination, in the manner permitted in the Colorado Revised Nonprofit Corporation Act, whether indemnification is permissible in the circumstances. If indemnification is determined to be permissible, the Association shall indemnify the individual to the fullest extent permissible, provided that any indemnification for expenses shall be limited to the amount found reasonable by an evaluation conducted in a manner permitted by the Colorado Revised Nonprofit Corporation Act.

This Article shall not be interpreted to limit in any manner any indemnification the Association may be required to pay pursuant to the Colorado Revised Nonprofit Corporation Act, any court order, or any contract, resolution or other commitment which is legally valid.

#### ARTICLE 8. DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon dissolution, the assets of the Association will be distributed to the Unit Owners in accordance with C.R.S. § 38-33.3-218 of the Colorado Common Interest Ownership Act.

## ARTICLE 8a. Members

The Association shall have one or more classes of members as set forth in the Declaration. The designation of each class, the manner of election or appointment and the qualifications and rights of the members of each class shall be as set forth in the Declaration.

**DISCLOSURE STATEMENT  
FOR  
THE 925 EAST 8TH AVENUE CONDOMINIUM**

**THE STATE OF COLORADO HAS NOT PREPARED OR ISSUED THIS DOCUMENT NOR HAS IT PASSED ON THE MERITS OF THE SUBDIVISION DESCRIBED HEREIN.**

1. Developer. The name and address of the Developer (hereinafter "Seller") is Barkley Hobbes, LLC, a Colorado limited liability company, 3890 S. Narcissus Way, Denver, Colorado 80237.

2. Location. The 925 East 8th Avenue Condominium is located at 925 East 8<sup>th</sup> Avenue, Denver, Colorado. There are 6 two bedroom units in the project, Nos. 135, 140, 235, 240, 335, and 340. The other 24 units are one bedroom.

3. Amenities. There is a coin operated laundry facility, rooftop deck, and storage lockers for each Unit. There are no other amenities or recreational facilities outside of the Unit itself.

4. Special Districts. To Seller's knowledge, at the time of contract there are no taxes, special assessments or special districts existing or proposed to which the Buyer may be subject, or which are unpaid at the time of contracting, other than as disclosed in the Purchase Agreement. To Seller's knowledge, no special district has defaulted on any obligation or has filed for bankruptcy and no such actions are pending. Seller is not in default on any obligation or payment to any special district. Seller is responsible for paying any special district fees and taxes prior to closing.

5. Type of Ownership. The Buyer will get legal title to the Property at Closing according to the terms of the Purchase Agreement and title will be subject to those items listed on the title commitment as "Exceptions". The Seller will deliver to the Buyer at Closing, a general warranty deed giving the Buyer legal title (fee simple absolute) to the Property. The Seller will arrange to have this deed delivered to the County Clerk for recording immediately after the Closing.

6. No Judgments. There are no judgments nor administrative orders issued against Seller, the Association or the managing entity which are material to The 925 East 8th Avenue Condominium.

7. Licensed Brokers. All sales within Colorado shall be made by brokers and salespersons licensed by the State of Colorado unless specifically exempted pursuant to C. R. S. § 12-61-101(4).

8. Access and Utilities. Legal access to The 925 East 8th Avenue Condominium is by public streets. Water and sewer, gas, electricity, telephone and cable are complete and

available to each Unit. Electricity, telephone and cable are separately metered for each Unit. The Project has a central heating system that is recently inspected. Air conditioning is not provided. Water and sewer are overall expenses of the Association and each purchaser pays a portion of the cost as part of the monthly dues.

9. Common Interest Community. The 925 East 8th Avenue Condominium is a common interest community pursuant to Article 33, Title 38, Colorado Revised Statutes.

10. Fees. Monthly Association assessments which will be the responsibility of the Buyer are estimated at \$153.00 per one bedroom Unit (which includes \$27.00 per month for a reserve fund) and \$183.00 per 2 bedroom Unit (which includes \$27.00 per month for a reserve fund), effective January 1, 2000. A \$5.00 per month assessment will be added to each Unit to which a parking space is assigned as a Limited Common Element. Seller in every contract for sale shall provide to the Buyer the written statement of assessments pursuant to C. R. S. § 38-33.3-316(a). These fees pay for the maintenance, management and operation of the Units which management and operation are the responsibility of the Association. The Seller is responsible for paying assessments on Units it owns. A projected annual budget for the Association is attached to this Disclosure Statement. Buyer's dues and fees may be changed or increased if the cost of upkeep of The 925 East 8th Avenue Condominium increases.

11. Control of Association. The 925 East 8<sup>th</sup> Avenue Condominium Association, Inc. is responsible for the management and operation of the Units. Membership in the Association is mandatory for owners of Units. The Seller (Declarant) has voting control of the Association. Not less than 60 days after conveyance of 25% of the Units that may be created by Declarant to Owners other than Declarant, at least one member and not less than 25% of the members of the Board of Directors must be elected by owners other than Declarant. No later than 60 days after the conveyance of 50% of the Units that may be created to Owners other than the Declarant, no less than 33 1/3% of the members of the Board of Directors must be elected by Owners other than Declarant. The Declarant's control period shall cease on the happening of any of the following events, whichever occurs earlier: (i) when 75% of the Units that may be created have been conveyed to Owners other than Declarant, (ii) two years after the last conveyance of a Unit by Declarant in the ordinary course of business, and (iii) two years after the right to add new Units was last exercised; or (iv) when, in its discretion, Declarant so determines. Seller does not have any financial interest nor does it potentially derive any income or profit from the Association. Seller does not have a right to borrow or authorize borrowing from the Association. The Board of Directors of the Association controls and disburses the funds of the Association.

12. Use. The 925 East 8th Avenue Condominium will consist of up to 30 Units.

13. Manager. Weststar Management Corp. located at 3615 Federal Boulevard, Denver, Colorado is the managing entity of The 925 East 8th Avenue Condominium. Seller has no financial interest in the manager. The manager will provide the services of operating and maintaining the Project on behalf of the Association which shall include making contracts for electricity, gas, refuse disposal, vermin extermination, and for any other utilities or services considered advisable or necessary, making ordinary repairs and alterations, and performing any and all things in and about the management, upkeep and operation of the Project customarily

performed by managing agents of similar property in Denver. The initial term of the Management Agreement expires September 30, 2000, but shall continue thereafter unless either the Association or Manager give 30 days' prior written notice of termination.

14. Reserves. A general operating and replacement reserve fund has been established and is cash funded. There are no outstanding obligations in favor of or against the reserve funds. Seller does not have a right to borrow or to authorize borrowing from this fund. The Buyer will receive a periodic accounting from the Association in accordance with Article 10 of the Declaration.

15. Insurance. The Association shall maintain property insurance on The 925 East 8th Avenue Condominium and commercial and general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of The 925 East 8th Avenue Condominium in accordance with Article 17 of the Declaration.

16. Mechanic's Liens. The mechanic's lien law of Colorado may authorize enforcement of a lien by selling any undivided interest ownership of the Common Elements.

**ARTICLE 9. REGISTERED OFFICE AND REGISTERED AGENT**

The initial registered office of the Association is 410 17<sup>th</sup> Street, Suite 2400, Denver, Colorado 80202. The initial registered agent at such office is Michael G. Milstein.

**ARTICLE 10. INITIAL BOARD OF DIRECTORS**

The number of member(s) constituting the initial Board of Directors shall be two. The name and address of these persons are listed as follows:

Name	Address
Michael G. Milstein	410 17 <sup>th</sup> Street, Suite 2400 Denver, CO 80202
Ilene S. Milstein	3890 S. Narcissus Way Denver, CO 80237

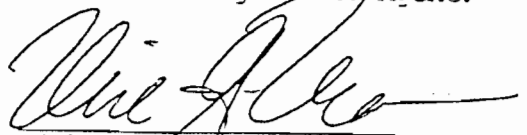
**ARTICLE 11. INCORPORATOR**

The name and address of the incorporator is Michael G. Milstein, 410 17<sup>th</sup> Street, Suite 2400, Denver, Colorado 80202. The incorporator is a natural person of the age of eighteen (18) years or more.



Michael G. Milstein, Incorporator  
410 Seventeenth Street, Suite 2400  
Denver, CO 80202  
303/534-2277

Consent of Registered Agent:



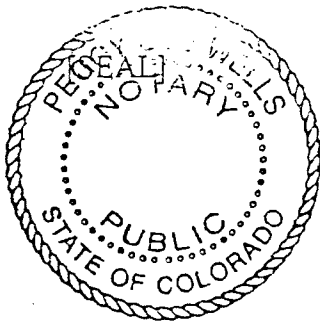
Michael G. Milstein

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of December, 1999 by Michael G. Milstein.

WITNESS my hand and official seal.

My commission expires: 10/04/03



Peggy Sue Woods  
Notary Public

My Commission Expires 10/04/2003