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DECLARATION

FOR

ROSEMARY STREET CONDOMINIUMS

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AND ALLOCATED INTERESTS C-1**

**DECLARATION
FOR
ROSEMARY STREET CONDOMINIUMS**

THIS DECLARATION, hereinafter referred to as "Declaration," is made this 16th day of August, 2005, by 1145 Rosemary, LLC, a Colorado limited liability company, whose address is 12835 East Arapahoe Road, Suite 200, Tower Two, Centennial, CO 80112 ("Declarant").

RECITALS:

A. Declarant is the owner of that certain real property in the City and County of Denver, State of Colorado, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

B. Declarant desires to create a common interest community (the "Community") on the real property described in Exhibit A under the name of "Rosemary Street Condominiums," in which portions of the real property described in Exhibit A will be designated for separate ownership and uses of a residential nature, and in which portions will be designated for co-ownership by the Unit Owners.

C. Declarant has caused Rosemary Street Owners Association, Inc., a Colorado nonprofit corporation (the "Association") to be incorporated under the laws of the State of Colorado, as an owners' association, for the purpose of exercising the functions set forth herein.

**ARTICLE 1
SUBMISSION OF THE REAL ESTATE/DEFINITIONS**

Section 1.1 Submission of the Real Estate. By executing and recording of this Declaration, Declarant hereby submits the real property described in Exhibit A, together with all easements, rights, and appurtenances thereto and the building and improvements erected thereon, and together with such additional unspecified real property as may be added pursuant to the rights reserved to the Declarant (collectively, the "Real Estate") to the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as it may be amended from time to time (the "Act") and to the terms and conditions of this Declaration. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable. Declarant hereby declares that all of the Real Estate shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration. Declarant further declares that this Declaration is made for the purpose of protecting the value and desirability of the Real Estate, that this Declaration shall run with the Real Estate and shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Owner thereof, in perpetuity.

Section 1.2 Definitions. Each capitalized term not otherwise defined in this Declaration or in the Map for this Condominium shall have the meaning specified or used in the Act. In case of a conflict between a definition in this Declaration and the Act, the definition in this Declaration shall control.

1.2.1 Act. The Colorado Common Interest Ownership Act (as may be amended from time to time) set forth in Colorado Revised Statutes §§ 38-33.3-101 *et seq.*

1.2.2 Allocated Interests. Collective reference to the Undivided Interest in the Common Elements, Common Expense Liability, and Voting Interest appurtenant to each Unit, all of which are set forth in this Declaration on Exhibit C, and as may be reallocated pursuant to the provisions of this Declaration.

1.2.3 Articles. The Articles of Incorporation of the Association, as the same may be amended from time to time.

1.2.4 Association. The owners association formed under the name of ROSEMARY STREET OWNERS ASSOCIATION, INC., a Colorado non-profit corporation, its successors and assigns.

1.2.5 Building. The structure within which Units and Common Elements are located, depicted by a number as shown on the Map.

1.2.6 Bylaws. The Bylaws of the Association, as the same may be amended from time to time.

1.2.7 Common Elements. All portions of this Community *excluding* the Units, and *including* (i) the real property upon which the Community is situated and which is subject to this Declaration; (ii) all real and personal property existing for the common use of Owners (including, but not limited to, Parking Spaces and landscaping); (iii) mechanical facilities; and (iv) any other real or personal property acquired by the Association. The term "Common Elements" includes both "General Common Elements" (those Common Elements for the use of all Owners and Related Users) and "Limited Common Elements" (as defined below), unless the context requires otherwise.

1.2.8 Common Expenses. As used in this Declaration, this term includes all charges levied by and for the benefit of the Association or individual Owners pursuant to the Governing Documents, including, but not limited to: (i) annual costs and expenses of the Association resulting from owning, leasing, using, maintaining, or otherwise controlling any real or personal property and the Common Elements; (ii) expenses incurred by the Association pursuant to 7.2; (iii) large, single item expenditures of the Association (including but not limited to, capital expenditures and "Special Assessments," as defined in Section 7.4; and (iv) amounts necessary to fund reserves pursuant to Section 7.9 below.

1.2.9 Common Expense Assessment; Assessment. In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner and Unit: (i) the Owner's Allocated Interest in the Common Expenses, subject to reapportionment pursuant to 7.3; (ii) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Executive Board; (iii) charges against a particular Owner and the Unit for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by the Owner or Related Users; (iv) charges levied against an Owner pursuant to Section 7.7 due to Owner's negligence or misconduct ("Default Assessment"); and (v) any sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Unit (including but not limited to, "Special Unit Assessments" levied pursuant to Section 7.6).

1.2.10 Community; Common Interest Community. The common interest community with the name of, "Rosemary Street Condominiums and located on the Real Estate.

1.2.11 Covenants. Collective term for all promises, restrictions, reservations, conditions, terms, easements, and rights-of-way specifically set forth in this Declaration or in any one of the Governing Documents as the same may be adopted or amended from time to time.

1.2.12 Declarant. 1145 Rosemary, LLC, a Colorado limited liability company, its successors and such of its assigns as to whom the rights of Declarant hereunder are specifically assigned in accordance with the provisions of the Act. References in this Declaration to "Declarant" shall include all "Transferee Declarants" (as that term is defined by the Act) unless specifically provided otherwise.

1.2.13 Declarant Control Period. The period of time in which the Declarant may appoint the majority of the Executive Board as further described in Section 4.3 of this Declaration.

1.2.14 Declaration. This instrument together with the Map, as each may be amended from time to time.

1.2.15 Eligible Mortgagee. A First Mortgagee (as hereinafter defined) who: (i) is also a bank, commercial lender, insurance company, real estate mortgage investment trust, pension fund, mortgage banker, an agency of the United States Government, or the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender or any insurer or governmental guarantor including the Federal Housing Administration ("FHA") and the Department of Veterans Affairs ("VA"); and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Units. The notice must include the legal description, the Unit number and street address of the Unit on which it has such security interest and a request that the Eligible Mortgagee be given the information and afforded the rights described in Article 8 below.

1.2.16 Executive Board; Board. The governing body of the Association.

1.2.17 First Mortgage. A mortgage, deed of trust, deed to secure a debt, or any other form of security instrument affecting title to a Unit (collectively, "Mortgage") which is subject only to governmental liens, the lien for real property taxes, a portion of the Common Expense Assessment, and other liens made superior by Colorado law. The holders, insurers, and guarantors of a First Mortgage are collectively referred to as "First Mortgages."

1.2.18 Governing Documents. This Declaration, the Map, the Articles, the Bylaws, and the Rules, and all written policies and procedures of the Board, as each may be amended from time to time.

1.2.19 Limited Common Elements. Portions of the Common Elements designed or designated for exclusive use by the Owner of a particular Unit or which is limited to and reserved for the common use of more than one but fewer than all Owners. The term "Limited Common Elements" shall also include those portions of the Community treated as Elements by operation of Sections 202(1)(b) and 202(1)(d) of the Act, or as otherwise depicted on the Map.

1.2.20 Managing Agent. The person or entity designated by the Board to manage the affairs of the Community and to perform various other duties assigned to it by the Board by the provisions of this Declaration and Bylaws.

1.2.21 Map. That certain "Plat and Condominium Map of Rosemary Street Condominiums" recorded of even date herewith in the real property records for the City and County of Denver, State of Colorado, and any amendments thereto.

1.2.22 Owner. The record owner, whether one or more persons or entities, of fee simple title to any Unit. The Declarant is the initial Owner of each Unit until those Units are conveyed to another party, and as to Units owned by it, Declarant shall enjoy the same rights and shall be subject to the same duties as other Owners. If a Unit is sold under a contract for deed, the vendee shall be deemed the Owner of the Unit for purposes of this definition. All Owners are members in the Association.

1.2.23 Parking Spaces. Those portions of the Real Estate shown on the Map for the parking of vehicles and which are Common Elements. Specific Parking Spaces are numbered on the Map. Each Parking Space has been allocated to a particular Unit pursuant as shown as the Map as Limited Common Elements.

1.2.24 Record; Recorded. Filed in the real estate records of the City and County of Denver, State of Colorado, as maintained by the Clerk and Recorder's office.

1.2.25 Related User. Any Person who: (i) resides with an Owner within the Unit; (ii) is a guest or invitee of an Owner; or (iii) is an occupant, tenant or contract purchaser of a Unit, and any family member, guest, invitee or cohabitant of any such person.

1.2.26 Rules. All policies, procedures, rules, regulations and architectural control or design guidelines promulgated by the Executive Board regarding the use and enjoyment of all Units and Common Elements.

1.2.27 Unit. The fee simple interest in a condominium unit, as shown by each such Unit's identifying number on the Map, together with the Allocated Interests, and together with the exclusive right to use any Limited Common Elements that may be appurtenant to such Unit (i.e., Parking Spaces).

ARTICLE 2

ESTABLISHMENT OF CONDOMINIUMS

Section 2.1 Name and Type. The Community is a condominium pursuant to the Act. The name of the Community is "Rosemary Street Condominiums."

Section 2.2 Division into Units; Maximum Number of Units. The number of Units included in the Common Interest Community is five (5), and each Unit number and its Allocated Interests are shown on Exhibit C attached hereto. Five Units is the "maximum number of Units that may be created."

Section 2.3 Formula for Determining Allocated Interests. The Common Expense Liability, Undivided Interest in the Common Elements, and Voting Interest in the Association allocated to each Unit are determined as follows:

2.3.1 Undivided Interest in the Common Elements: a fraction, the numerator of which is the one and the denominator of which is the total number of Units in the Community, expressed as a percentage.

2.3.2 Common Expense Liability: a fraction, the numerator of which is the one and the denominator of which is the total number of Units in the Community, expressed as a percentage.

2.3.3 Voting Interest: on an equal basis for each Unit in the Common Interest Community, each Unit having one vote.

Section 2.4 Description of a Unit. Any instrument affecting a Unit may legally describe it by the identifying number shown on the Map. A legal description of a Unit may be in the following form:

Unit _____, ROSEMARY STREET CONDOMINIUMS, in accordance with and subject to the Declaration for Rosemary Street Condominiums recorded on August _____, 2005, as Reception No. _____ and the Plat and Condominium Map of Rosemary Street Condominiums recorded on August _____, 2005, at Reception No. _____ in the Office of Clerk and Recorder for the City and County of Denver, State of Colorado.

Such instrument may also reference the exclusive right to use one or more Parking Spaces, as follows:

TOGETHER WITH Parking Space # _____, as shown on the Plat and Condominium Map of Rosemary Street Condominiums, recorded on _____, 2005, at Reception No. _____ in the Office of Clerk and Recorder for the City and County of Denver, State of Colorado.

Any conveyance or other instrument affecting title to a Unit or any part thereof describing the Unit in substantially the foregoing form or otherwise effectively describing the Unit shall be deemed to include and describe the entire Unit including the appurtenant undivided interest in Common Elements and all of the rights, easements, obligations, limitations, encumbrances, covenants, conditions and restrictions benefitting or burdening the Unit under the terms of this Declaration.

Section 2.5 Unit Boundaries. Those portions of the Community shown and described as Units on the Map ("Unit Boundaries"). Each Unit's boundaries consist of the interior unfinished surfaces of the walls, ceilings, floors, windows, and walls, including all electrical outlets, lathe, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finish flooring, and any other material constituting any part of the finished surfaces within a Unit. All other portions of the walls, floors, or ceilings, are part of the Common Elements. All spaces of the Unit interior, interior partitions, and other fixtures and improvements within the boundaries of the Unit are part of the Unit. When interpreting deeds, plats, and plans, Unit boundaries shall be the then existing physical boundaries of a Unit (whether in its original state or reconstructed in substantial accordance with the original plans thereof) and such boundaries shall be conclusively presumed the correct boundaries of a given Unit rather than the boundaries expressed in the deed or plan, without regard to settling or lateral movement of the Building and without regard to minor variance between boundaries shown on the plan or deed, and those of the Building.

Section 2.6 Limited Common Elements Allocated to Particular Units. Each Parking Space allocated to a particular Unit as shown on the Map shall be a Limited Common Element appurtenant to such Unit. If allocated to a particular Unit, such Owner has the exclusive right to use this Common Element, but does not hold any ownership rights in such Limited Common Element. Additionally, the Declarant reserves, for itself, until the expiration of all Development Rights and Special Declarant Rights, and thereafter to the Association, the right to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of

the owners of Units to which those specified areas shall become appurtenant. Such areas include, but are not limited to Parking Spaces, which shall be allocated to a Unit in accordance with this Section 2.6. The Declarant or Association, as the case may be, may allocate or assign Common Elements or Limited Common Elements by making such an allocation: (i) in a Recorded instrument; or (ii) in the deed to the Unit to which such Limited Common Element shall be appurtenant; or (iii) by recording an appropriate amendment or supplement to this Declaration; or (iv) by recording a supplement to the Map. Such allocations by the Declarant or by the Association may be made as a matter of reserved right. All Limited Common Elements are owned by all the Owners as tenants-in-common and it is only the use of which is reserved to one or more but less than all of the Owners.

Section 2.7 Inseparability of Unit. The interest of an Owner in a Unit and that Unit's appurtenant interest in Common Elements and Limited Common Elements shall be inseparable.

Section 2.8 Partition of Common Elements not Permitted. The Common Elements shall be owned in common by all Owners, and no Owner may bring any action for partition thereof.

ARTICLE 3 EASEMENTS

Section 3.1 Encroachment Easement. In the event any portion of the Common Elements, including Limited Common Elements, encroaches upon any Unit or any Unit encroaches upon the Common Elements, including Limited Common Elements, or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement, or shifting, provided, however, that in no event shall an easement relieve an Owner of liability in case of negligence or willful misconduct of such Owner. In the event any portion of a structure on the Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Elements shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 3.2 Recorded Easements. The Community shall be subject to all easements as shown on any survey plat or the Map, those Recorded and identified on Exhibit B attached hereto, those provided in the Act (including easements for encroachment set forth in Section 214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Declaration.

Section 3.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in, under and through the Community for the benefit of the Common Elements and the Units and the Improvements for ingress and egress, and for the installation, replacement, repair and

maintenance of utilities (herein "Utilities"), including, but not limited to water, sewer, gas, telephone, cable TV, electricity, heating, ventilating, air conditioning, computer, cable, and master television antenna or cable or satellite television systems, if any. Said blanket easement includes future utility services not presently available to the Units. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to operate, repair, and maintain the Utilities. Further, Declarant, or the Association, thereafter, for so long as it possesses Development Rights, may grant easements over the Common Elements for the installation, operation, maintenance, repair, renovation and reconstruction of any Utilities necessary or desirable for the Community, without the need for any further approval from the Owners or any Mortgagee. The easements provided for in this Section 3.3 shall not affect, avoid, extinguish or modify any other recorded easement(s) affecting the Common Elements, nor shall these easements unreasonably interfere with the use and enjoyment of any Unit by the Owner thereof.

Section 3.4 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual nonexclusive right of ingress to and egress from the Owner's Unit over and across the Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for repairs and maintenance.

Section 3.5 Emergency Access Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons and to any security personnel now or hereafter servicing the Community (without implying any obligation on the part of Declarant or the Association to provide for security), to enter upon all Common Elements located in the Community in the performance of their duties.

Section 3.6 Support Easement. Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future within the Community.

Section 3.7 Owners' Easements of Enjoyment. Every Owner shall have a right and easement access to their Unit and of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- 3.7.1 The right of the Executive Board to enforce all Covenants.
- 3.7.2 The right of the Executive Board to promulgate and publish Rules with which each Owner and Related User shall strictly comply.
- 3.7.3 The right of the Executive Board to grant variances from compliance with

Governing Documents when, in the Executive Board's opinion, circumstances so require.

3.7.4 The right of the Executive Board to suspend the voting rights and rights to use the Common Elements by any Owner for any period during which any Assessment against their Unit remains unpaid; and for a period not to exceed sixty days for any infraction of its published Rules.

3.7.5 The right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements.

3.7.6 The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3.7.7 The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 3.8 Delegation of Use. Any Owner may delegate his or her right of enjoyment to the Common Elements to Related Users.

Section 3.9 Easements Deemed Created. All conveyances of Units made after the date of this Declaration is Recorded, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 3 even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

ARTICLE 4 **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 4.1 Membership. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Owner is obligated to comply with the Governing Documents. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void.

Section 4.2 Voting. Except as otherwise provided in the Governing Documents, each Owner shall be entitled to vote on all matters that are subject to a vote by the Owners. The Voting Interest allocated to each Unit shall be cast in accordance with the Bylaws.

Section 4.3 Declarant Control Period. The Declarant shall be entitled to appoint and remove all or a majority of the officers and members of the Executive Board, in accordance with the Act. Such rights are limited as follows:

4.3.1 Sixty (60) days after the conveyance of twenty-five percent (25%) of the maximum number of Units that may be created pursuant to this Declaration, to non-Declarant Owners: at least twenty-five percent (25%) of the Board, but not less than one (1) Board member, shall be elected by the non-Declarant Owners.

4.3.2 Sixty (60) days after the conveyance of fifty percent (50%) of the maximum number of Units that may be created to non-Declarant Owners: not less than one-third (1/3) of the Board shall be elected by the non-Declarant Owners.

4.3.3 Not later than the earlier of:

(i) Sixty (60) days after conveyance of seventy-five percent (75%) of the maximum number of Units that may be created to the Owners other than the Declarant; or

(ii) Two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or

(iii) Two (2) years after any right to add new Units was last exercised by the Declarant,

the Owners shall elect the majority of the Board, which majority must be elected by non-Declarant Owners and at least a majority of whom must be Owners other than Declarant, or designated representatives of Owners other than Declarant.

The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the Declarant Control Period; however, in such an event, the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before a removal or appointment become effective.

ARTICLE 5 **THE ASSOCIATION**

Section 5.1 General Purposes and Powers. The Association, acting in all instances through its Executive Board unless otherwise required by the Act or specifically by this Declaration, shall perform such functions and manage and operate the Common Interest Community and the Real Estate as provided in this Declaration so as to further the interests of the Owners. The Association shall have all power necessary or desirable to effectuate such purposes and shall act pursuant to the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties, and authority.

Section 5.2 Powers; Duties. The Association, acting in all instances by and through the

Executive Board, shall have the following specific powers and duties:

5.2.1 The Association shall have all of the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et seq.

5.2.2 The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Common Interest Community.

5.2.3 The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, repair, reconstruct, replace, improve, and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to make Improvements thereon. Such additional Common Elements may be held in the Association's name at attorney-in-fact for the Owners pursuant to Article 11 below.

5.2.4 The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours to the extent deemed necessary for the maintenance, repair or replacement of any Common Elements, or at any time and by force, if necessary, to prevent damage to any real or personal property within the Common Interest Community.

5.2.5 The Association may undertake any activity, function or service for the benefit or to further the interests of the Owners.

5.2.6 The Association shall have the absolute right to engage a manager as more particularly provided in the Bylaws.

5.2.7 The Association may assign its future income, including its rights to receive Common Expense Assessments, upon the affirmative vote of the Owners to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, in accordance with the Bylaws.

5.2.8 The Association shall have complete authority and control to issue and amend restrictions on use and occupancy of the Units and Common Elements in addition to those contained in this Declaration in furtherance of its rule-making authority.

5.2.9 The Association shall establish and enforce Rules as it deems necessary to ensure the proper use, development, enhancement, repair, maintenance and replacement of real and personal property within the Common Interest Community.

5.2.10 The Association shall have the right to lease or license any Parking Space not allocated to a particular Unit in accordance with Section 2.6, upon such terms and conditions as the Association shall determine.

5.2.11 The Association shall accept title to any property, including any Improvements

thereon, personal property transferred to the Association by Declarant and equipment related thereto, together with the responsibility to perform any and all functions associated therewith; provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple interest, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration and any Supplemental Declaration applicable thereto.

Section 5.3 Enforcement. The Association shall have the power to enforce provisions in its Governing Documents and shall take such action as the Executive Board deems desirable to cause such compliance by each Owner and each Related User, by any of the following means:

5.3.1 By entry upon any Unit after notice and an opportunity to be heard (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance including by curing said violation;

5.3.2 By commencing and maintaining actions and suits: (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise;

5.3.3 By exclusion of any Owner or Related User from use of any Common Elements for a period of sixty (60) days following any violation of the Governing Documents, or so long as the violation continues, whichever is shorter;

5.3.4 By suspension of the voting rights of an Owner for up to thirty (30) days following any violation of a provision of the Governing Documents, or so long as the violation continues, whichever is longer;

5.3.5 By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien.

Section 5.4 Association Agreements. Any agreement for professional management of the Common Interest Community or any contract providing for services of the Declarant may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or a penalty upon thirty (30) days written notice. The Association shall not be bound either directly or indirectly to a contract or lease (including management contracts) entered into during the Declarant Control Period unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after the end of the Declarant Control Period upon not more than thirty

(30) days notice to the other party thereto.

Section 5.5 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the Owner thereof or his or her agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against either the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished; provided, however, express consent shall be deemed given by the Owner of any Unit to the Association, or any Managing Agent, in the case of emergency repairs. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against any Unit, or any part thereof, of any Owner for labor performed or for materials furnished in work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of Assessments.

Section 5.6 Indemnification. To the full extent permitted by law, and as more particularly provided in the Bylaws, each officer, committee member and member of the Executive Board shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, committee member, or member of the Executive Board, or any settlements thereof, whether or not they are an officer, committee member, or member of the Executive Board at the time such expenses are incurred; except in such cases wherein such officer or Executive Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

Section 5.7 Right to Notice and Comment. Pursuant to C.R.S. § 38-33.3-205(1)(o), before the Executive Board amends the Bylaws or adopts or amends Rules, or whenever the Governing Documents require that an action be taken after "Notice and Comment," and at any other time the Executive Board determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Further, any Owner may give "Notice and Comment" to the Owners of any matter affecting the Common Interest Community, and Owners shall then have the right to comment, orally or in writing, on the matter. Notice shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or notice shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The Notice shall be given not less than three days before the proposed action is to be taken. The Notice shall invite comment to the Executive Board or an Owner, orally or in writing before the scheduled time of any meeting.

ARTICLE 6
MAINTENANCE RESPONSIBILITIES

Section 6.1 Owner Maintenance. Except as limited by Section 6.2 below:

6.1.1 Each Owner shall be responsible for the maintenance, repair, alteration, remodeling of said Owner's Unit.

6.1.2 Parking Spaces may only be used in accordance with the Governing Documents.

For purposes of maintenance, repair, replacement, alteration and remodeling, an Owner shall be deemed to own and shall have the right and obligation to maintain, repair, alter and remodel, the interior non-supporting walls, and the materials (such as, but not limited to, plaster, gypsum dry wall, paneling, wallpaper, paint, wall and floor tile, and flooring, but not including the sub-flooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, and the interior surface of the perimeter doors and windows. The Owner shall also be responsible for the maintenance and repair (and damage as a result of any repair) of the plumbing, gas, electrical, TV, cable systems, and air conditioning, heating units (including water heaters and furnaces) and ducts servicing the Unit, including computer and television cable equipment and connections, and all appliances whether "built-in" or freestanding within a Unit. The Owner shall not be deemed to own the Utilities running through his or her Unit which serve one or more other Units, except as a tenant-in-common with the other Owners; provided, however, Owners shall be responsible for any electrical outlets or switches that are accessed from the inside of such Owner's Unit, and meant to provide service solely for such Unit. Owners shall be responsible for cleaning and replacing all glass surfaces and windows in or appurtenant to such Owner's Unit. Owners shall be responsible for the replacement of all light bulbs for light fixtures that are located within such Owner's Unit as well as light fixtures located outside such Owner's Unit but operated by light switches located within such Owner's Unit.

Section 6.2 Association Maintenance of Common Elements. Although the Owners may have certain responsibilities pursuant to Section 6.1 above, the Association, acting through the Board, its officers and the Managing Agent shall have the sole and exclusive right to manage, operate, control, repair, replace or restore all Common Elements including the Parking Spaces and other Limited Common Elements and any portion thereof, together with the improvements, all as more fully set forth in the Governing Documents. Should said maintenance repair result from the negligence, action or failure to act, of an Owner or his or her Related Users, the Owner shall reimburse the Association for the costs of such maintenance or repair immediately upon receipt of an invoice for said costs pursuant to Sections 7.6 and 7.7 below.

Section 6.3 Easements to Units for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within a Unit or may be conveniently accessible only through a particular Unit. The Board, any Managing Agent, and each Owner shall have a non-

exclusive right and easement, which may be exercised for any Owner by the Board, or the Managing Agent, as his agent, for access through each Unit and to all Common Elements, from time to time, during such reasonable hours as may be reasonably necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit. When access to a Unit is required, at least twenty-four (24) hours prior notice shall be provided to the occupants of such Unit, except when said occupants have no objection to earlier entry and except in the case of an emergency. The cost to repair damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of repairs within another Unit, at the instance of the Board or the Managing Agent, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense Assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration or repair of the damaged areas shall be to substantially the same condition as they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the activities of any Owner, or said Owner's Related Users, then the Owner shall be responsible for all costs and losses incurred as a result of such damage, including any expenses incurred to avoid or repair such damage and any losses suffered by other Owners as a result of such damage.

Section 6.4 Utilities. Gas, electricity, telephone and cable television will be separately metered to each individual Unit, and the Owner of each Unit shall pay the costs of the same as billed by the appropriate utility or organization. Other costs associated with the use and occupancy of a given Unit may be individually billed to such Unit, and the respective Owner shall pay the same. To the extent that water, sewer, trash removal and other costs associated with the use and occupancy of a Unit are not separately metered and/or billed to individual Units, the costs of the same shall be billed to the Association and shall be a Common Expense to be included in the monthly or other Assessments levied against the Unit and payable by the Owner.

ARTICLE 7
COVENANT FOR PAYMENT OF ASSESSMENTS TO ASSOCIATION

Section 7.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Unit, shall be deemed to covenant and agree, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay Assessments to the Association pursuant to the Governing Documents. Such Assessments shall be a personal obligation of the Owner of such Unit at the time when the Assessment or other charges became due. The Assessments shall be a charge on each Unit and shall be a continuing lien upon the Unit against which each such Assessment is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without

limitation, any claim that the Association or the Executive Board is not properly exercising its duties and powers under this Declaration.

Section 7.2 Purpose of Assessments. In addition to such other purposes as set forth in the Act, Assessments shall be used for the purposes of promoting the health, safety, and welfare of Owners and Related Users, and in particular:

7.2.1 To enforce all provisions of the Governing Documents;

7.2.2 To exercise all rights and powers and to discharge all duties and obligations of the Association, and to pay all expenses therefore, pursuant to the Act and the Governing Documents;

7.2.3 To discharge all expenses incurred by the Association in the alteration, enhancement, construction, reconstruction, repair, maintenance or replacement of the Common Elements and portions of the Community the Association is required to maintain and all Improvements located thereon, including fixtures and personal property related thereto;

7.2.4 To discharge all expenses incurred by the Association in the alteration, maintenance, repair and replacement of any property the Association may elect to so alter, maintain, repair or replace pursuant to the Governing Documents;

7.2.5 To pay all premiums for insurance policies obtained and kept in full force and effect pursuant to Section 9.5.

7.2.6 To pay the costs of providing utilities to and within the Real Estate, including any utilities the Association provides to each Unit; and

7.2.7 To fund any operating deficit or the reserves pursuant to Section 7.9, and to fund the Association deems necessary to meet its financial obligations.

Section 7.3 Apportionment of Common Expenses. All Common Expense Assessments shall be assessed against all Units in accordance with the formula for Common Expense Liability as set forth in this Declaration, except as otherwise provided in this Declaration, and in the Board's sole discretion:

7.3.1 Any Common Expense for services provided by the Association to an individual Unit pursuant to the Governing Documents or at the request of the Owner may be assessed against that Unit.

7.3.2 Any Common Expense for repair, replacement, or installation of a Limited Common Element appurtenant to more than one Unit but less than all may be assessed against the benefited Units.

7.3.3 Any Common Expense for insurance may be assessed in proportion to risk.

7.3.4 Any Common Expense for utility services may be assessed in proportion to usage.

7.3.5 If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner and that Unit.

7.3.6 Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

Section 7.4 Annual Assessment/Commencement of Common Expense Assessments. As required by Colorado law, the Common Expense Assessment shall be made on an annual basis against all Units based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. The budget shall be submitted to the Owners, pursuant to Section 315(1) of the Act. Common Expense Assessments shall be due and payable annually or in periodic installments, or in any other manner, as determined by the Executive Board. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Unit to an Owner other than the Declarant occurs.

Section 7.5 Special Assessments. The Executive Board shall have the right during any calendar year, upon not less than thirty (30) days' notice to the Owners, to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a special assessment for such purpose or purposes as may be necessary or appropriate to maintain the Community to such standard as the Board deems appropriate ("Special Assessment"). Special Assessments may include, without limitation, assessments for the cost of any construction, reconstruction, repair or replacement of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved budget for such calendar year.

Section 7.6 Special Unit Assessment. The Association may also levy a Special Unit Assessment including fines, against any Owner and such Owner's Unit to reimburse the Association for costs incurred in bringing an Owner and his or her Unit into compliance with the provisions of the Governing Documents. A Special Unit Assessment may be levied upon the vote of the Board after notice to the Owner and an opportunity to be heard by the Board and shall be collectible as a Common Expense Assessment.

Section 7.7 Default Assessments. In the event that the need for maintenance, repair, or replacement of any portion of the Community is caused by or in any way results from the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner's Related User, then the expenses, costs, and fees incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner, and such obligation shall be considered a Default Assessment, collectible as a Common Expense Assessment.

Section 7.8 Lien Priority. The lien for all Assessments levied by the Association pursuant to the Act and as described by this Article 7 is prior to all other liens and encumbrances on the Unit except:

7.8.1 Liens and encumbrances Recorded before the recordation of the Declaration;

7.8.2 Liens for real estate taxes and other governmental assessments or charges against the Unit;

7.8.3 A First Mortgage on the Unit Recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Association's lien is made superior by the Act, i.e. the Act provides that the Association's lien shall be prior to all First Mortgages to the extent of six (6) months of Common Expense Assessments.

This subsection does not affect the priority of mechanics' or materialmen's liens. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessment under this Section 7.8 is required, except a notice of delinquent Assessment must be Recorded before commencement of foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien, however, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish that portion of the Association's lien that is subordinate to the First Mortgage. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessments thereafter becoming due nor from Assessments which were levied prior to the sale and remain unpaid. No sale or transfer shall relieve such Unit from the Association's lien rights for any Assessments thereafter becoming due. Where the holder of a Recorded First Mortgage or other purchaser of a Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his or her successors and assigns, shall not, except as provided by this Subsection 7.8.3 above, be liable for Assessments levied by the Association which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or other Assessments shall be deemed to be Common Expenses collectible from all of the Units including such acquirer, his or her successors and assigns.

Section 7.9 Reserves/Surplus. The Association shall establish an adequate reserve fund for the maintenance, repair and replacement of those Common Elements and the portions of the Community the Association is required to maintain, which must be periodically maintained, repaired or replaced. Such reserve fund shall be funded through the initial payments described in Section 7.17 below, and thereafter as a portion of annual Common Expense Assessments. Any surplus funds derived from Assessments shall be transferred to the reserve fund or used for Association operations, in the Executive Board's sole discretion and by acceptance of a deed to his or her Unit, each Owner hereby directs the Executive Board to make this determination each year.

Section 7.10 Notice to Lien Holders. A copy of a notice of delinquency shall be mailed certified mail or registered mail, return receipt requested, to Eligible Mortgagee, and to persons who

have delivered requests for notice with the Association. Notice shall be mailed to the name and address as appears on the request for notice and on the Recorded First Mortgage.

Section 7.11 Effect of Non-Payment of Assessments. Any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof, shall bear interest at the rate of twenty-one percent (21%) per annum or at such lesser rate as may be set by the Executive Board from time to time from the due date, and the Association may assess a monthly late charge thereon. Failure to make payment within the sixty (60) days of the due date thereof shall cause the total amount of such Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. The Association's costs of suit, expenses and reasonable attorneys' fees incurred simply by virtue of the failure of the Owner to timely pay Assessments when due, including attorneys' fees and costs for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and cast the votes appurtenant to such Unit, and to convey or otherwise deal with the same. The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Whether or not the Association forecloses its lien, it may apply for and be entitled to, the *ex parte* appointment of a receiver for a Unit and the Owner of such Unit shall be liable for all costs and expenses in securing and maintaining this appointment, including receiver's fees, attorneys fees and costs.

Section 7.12 Statement of Unpaid Assessments. The Association shall provide statements of unpaid assessments as provided by the Act.

Section 7.13 Failure to Fix Assessment. The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.

Section 7.14 No Waiver or Abandonment. No Owner may be exempt from liability for

payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made.

Section 7.15 Encumbrancer's Rights. Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any unpaid Assessments payable with respect to such Unit, and upon such payment the encumbrancer shall have a lien on such Unit for the amounts paid of the same rank as the encumbrancer's lien.

Section 7.16 Homestead Exemption. Each Owner hereby agrees that the Association's lien on a Unit for Assessments as hereinbefore described is not subject to the provisions of any federal or state homestead exemptions. Each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance for any Unit within the Community shall signify such grantee's waiver of all homestead exemptions.

Section 7.17 Contributions to Reserve Fund. Upon acquisition of a Unit from the Declarant, the purchasers of each such Unit shall contribute to the Reserve Fund of the Association an amount equal to one-sixth (1/6) the amount of the then-annual Assessment for that Unit as determined by the Board. The contribution to the Reserve Fund as required by this Section 7.17 shall not be considered prepayment of the Common Expense Assessment.

Section 7.18 Buyer's Deposits into Operating Fund. Upon acquisition of a Unit from the Declarant, Owners shall pay into the Operating Fund of the Association an amount equal to one-sixth (1/6) of the amount of the then-annual Assessment for that Unit (plus a pro-rata portion of the current monthly installment of the Common Expense Assessment for the month such Owner obtains title to the Unit). Such amounts shall be disbursed to the Association and shall be deposited by the Association into its operating account to be used for the Association's operations authorized by this Declaration. The funds deposited pursuant to this Section 7.18 shall be used by the Association to defray any budget deficits, especially during the inception of the Association when the Assessments may be insufficient to cover the costs of operating the Association and performing the obligations of the Association, or may be paid into the Reserve Fund. The Declarant shall not use any portion of the funds deposited pursuant to this Section 7.18 to defray any of Declarant's expenses or reserve contributions (if any) or construction costs while it is in control of the Association .

ARTICLE 8

RIGHTS OF ELIGIBLE MORTGAGEES

Section 8.1 Eligible Mortgagee's Consent. Neither the Association nor any Owner shall do any of the following, unless at least sixty-seven (67%) percent of the Eligible Mortgagees (based upon one vote for each Eligible Mortgage) have given their prior written approval:

8.1.1 seek, by act or omission, to abandon the Community or to terminate the Map or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof,

pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Elements;

8.1.2 terminate the legal status of the Community after substantial destruction or condemnation of the same occurs;

8.1.3 change the formula for Allocated Interests for Units for the purposes of levying Assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of the Common Elements appurtenant to each Unit;

8.1.4 seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Elements; however, the granting of easements for public utility or other public purposes which is consistent with the normal or traditional uses shall not be deemed a transfer within the meaning of this provision;

8.1.5 apply hazard insurance proceeds for losses to any portion of the Community for other than the repair, replacement or reconstruction of the Community, except as may be provided by the Act upon substantial loss to the Units or Common Elements;

8.1.6 fail to maintain fire and extended coverage insurance on the Community and all Common Elements on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

Section 8.2 Notice to First Mortgagees. Any Eligible Mortgagee will be entitled to timely written notice of:

8.2.1 any condemnation loss or any casualty loss which affects a material portion of the Community or any Unit subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgagee;

8.2.2 any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgagee or Guarantor, which remains uncured for a period of sixty (60) days;

8.2.3 examine the books and records of the Association during normal business hours, receive a copy of financial statements of the Association (including the annual audited financial statement), receive written notice of all meetings of the Executive Board or Owners of the Association and designate a representative to attend any such meetings;

8.2.4 any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

8.2.5 any proposed action which would require the consent of a specified percentage

of Eligible Mortgagees as required in this Declaration.

Section 8.3 Additional Requirements for Amendments.

8.3.1 No amendment material to an Eligible Mortgage may be made to this Declaration without the prior written consent of at least fifty-one percent (51%) of the Eligible Mortgagees (based upon one vote for each Eligible Mortgagee) and approval of sixty-seven percent (67%) of the Voting Interests within the Community. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material":

- (i) voting;
- (ii) Assessments, liens for Assessment or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement for the Common Elements, including Limited Common Elements;
- (iv) casualty insurance, liability insurance or fidelity bonds;
- (v) reallocation of interests in Limited Common Elements or rights to use of the Common Elements;
- (vi) responsibility for maintenance and repair of the several portions of the Community;
- (vii) expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community, except as reserved by the Declarant in accordance with this Declaration;
- (viii) redefinition of boundaries of any Unit (provided, however, only the approval of the Eligible Mortgagee whose First Mortgage encumbers such affected Unit shall be required);
- (ix) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;
- (x) restoration or repair of the Community (after a hazard damage or partial condemnation) in the manner other than that specified in the Governing Documents.

- (xi) convertibility of Units into Common Elements or of Common Elements into Units;
- (xii) leasing of Units;
- (xiii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Unit; or
- (xiv) except as otherwise provided in Section 8.5 below, any provisions which are for the express benefit of Eligible Mortgagee.

8.3.2 An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors, typographical errors or for clarification only.

8.3.3 Notwithstanding the foregoing, Declarant hereby reserves the right to amend the Declaration pursuant to §§ 38-33.3-204(4) and (5), 38-33.3-208(3), 38-33.3-209(6), 38-33.3-210 or 38-33.3-222 of the Act.

8.3.4 During the Declarant Control Period, any amendment to this Declaration other than: (i) an amendment by the Declarant to add any of the Annexable Property as allowed by this Declaration; or (ii) any amendment as provided in Subsection 8.3.1 above shall require the prior approval of the VA or FHA (if either entity has pre-approved the Community). A draft of any amendment requiring VA or FHA approval should be submitted to the VA or FHA for such approval prior to the recordation of the amendment.

Section 8.4 Failure of Eligible Mortgagee to Respond. An Eligible Mortgagee who receives a written request to approve additions or amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days of the date received shall be deemed to have approved such request.

Section 8.5 Amendment of this Article 8. The provisions of this Article 8 are for the benefit of Eligible Mortgages. To the extent that underwriting requirements of Eligible Mortgages change, the Executive Board may amend this Article 8 to comply with such requirements.

ARTICLE 9

CASUALTY/CONDEMNATION/INSURANCE

Section 9.1 Casualty Destruction of Common Elements. If any portion of the Common Elements is damaged or destroyed by fire or other casualty, then:

- 9.1.1 if the cost to repair or rebuild does not exceed the amount of available

insurance proceeds, the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications therefor;

9.1.2 if the cost to repair or rebuild exceeds the amount of available insurance proceeds, then the Board shall contract to repair or rebuild the damaged portions of the Common Elements substantially in accordance with the original plans and specifications therefor, unless at least eighty percent (80%) of the Owners, including every Owner of a Unit or assigned Limited Common Element that will not be rebuilt, elect not to repair or rebuild the Community;

9.1.3 if the Owners elect not to the repair or rebuild the Community as provided in Subsection 9.1.2, then each Owner (and the holders of liens and encumbrances as their respective interest shall then appear) shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his or her Unit as compared to the aggregate decrease in the fair market values of all the Units caused by such damage or destruction. For purposes hereof, fair market value shall be determined by an appraiser licensed by the State of Colorado, selected by the Board and hired by and at the expense of the Association;

9.1.4 should a dispute arise as to the distribution of insurance proceeds as provided in Subsection 9.1.3, the dispute shall be decided by the American Arbitration Association pursuant to its Commercial Rules of Arbitration, with the arbitration proceedings held in the Denver, Colorado, metropolitan area;

9.1.5 if a bid to repair or rebuild is accepted, the Board shall have the right to levy a Special Unit Assessment against each Unit in the damaged or destroyed Building in the proportion the Units are assessed, for purposes of raising funds for the rebuilding or major repair of the structural Common Elements, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding. Such Assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 9.2 Casualty Destruction of Unit. In the event of damage or destruction of any Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof by the Association, they shall be deemed to have been approved.

Section 9.3 Condemnation. If any portion of the Community is taken by condemnation, eminent domain or any proceeding in lieu thereof, distribution of all rewards shall be in accordance with the Act.

Section 9.4 Power of Attorney.

9.4.1 Each Owner by his or her acceptance of the deed or other conveyances vesting in him interest in a Unit does irrevocably constitute and appoint the Association with full power of substitution as his or her true and lawful attorney in his or her name, place and stead to deal with such interest upon damage to or destruction, obsolescence, condemnation, liquidation of all or part of the Community, or the termination of the Community, and to represent the Owner in any related proceedings, negotiations, settlements or agreements. If requested to do so by the Association, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any damage, condemnation, liquidation or termination claim shall be final and binding on all Owners. No Owner shall have any rights against the Association or any of its officers or directors with respect thereto except in case of fraud or gross negligence.

9.4.2 In the event of a casualty destruction, taking or liquidation of all or any portion of the Community, or in the event of a termination of the Community, the Association (as attorney-in-fact for the Owners) shall represent the Owners in any related proceedings, negotiations, settlements, or agreements. Any payment from any settlement award or insurance claim obtained in relation to any condemnation, destruction, taking or liquidation of any or all of the Community shall be payable to the Association for the benefit of affected Owners and holders of First Mortgages. In the event the Association receives funds from the sale of property as discussed in this Article 9, or if the Association realizes any losses, awards or proceeds from any other source, or from the termination of the Declaration, these proceeds, awards or losses shall be allocated among the Owners according to their Undivided Interest in the Common Elements (subject to the provision of Subsection 9.1.3).

Section 9.5 Association Insurance. The Association shall obtain and continue in effect the following policies of insurance:

9.5.1 A master fire and casualty insurance policy with extended coverage endorsement for the full insurable value of all of the improvements within the Community. As used in this Section 9.5, "improvements" means and refers to the Common Elements together with those appliances and improvements located within the Units provided by Declarant to the initial Owners and does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional First Mortgagees and Agencies and shall meet the maximum standards of the various institutional first mortgage lenders whose loan(s) encumber any of the Units.

9.5.2 A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Elements. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such policies must provide that they may not be canceled or substantially modified by any party without at least thirty (30) days' prior written notice to the Association and to each holder of a First Mortgage which is listed as a scheduled holder of a First Mortgage in the insurance policy.

9.5.3 A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or Managing Agent, whether or not such persons are compensated for their services, naming the Association as insured and written in an amount equal to at least the estimated maximum funds, including reserves in the custody of the Association or a management agent at any given time during the term of the bond. However, the bond shall not be less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds or such greater amounts as may be required by the Act or other applicable law.

9.5.4 Worker's Compensation Insurance covering any employees of the Association.

9.5.5 Directors' and Officers' personal liability insurance to protect the officers and directors, and such members of committees appointed by the Executive Board as it deems reasonable, from personal liability in relation to their duties and responsibilities in acting as officers and directors (or committee members, as the case may be) on behalf of the Association.

9.5.6 Any other insurance coverage as required by the Act or by the Board.

All insurance premiums shall be a Common Expense to be included in the monthly or other periodic assessments levied by the Association. No policies shall require deductibles in excess of \$2,000 per occurrence, unless expressly approved by the Board. Each Owner shall be responsible to pay any deductible amount for any loss to his or her Unit. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his or her Unit. No Owner shall insure his or her Unit in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision, he or she shall be responsible to the Association for any such diminution.

Section 9.6 First Mortgagee Approval. Any restoration or repair of the Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by holders of First Mortgages which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgages.

Section 9.7 Deductibles. The Association is required to maintain blanket fire, hazard and liability insurance which covers the roofs and exterior walls of the Building. If a claim is made by an Owner against any policy owned by the Association under which such claim is covered, then the Owner shall be responsible for all deductibles up to \$2,000 (or such other amount as may be established by the Board) per occurrence on such claims. Any work to be done as a result of said Owner's claim shall begin only upon the Association's receipt of the deductible amount from the Owner. The Board of the Association as owner of the policies shall have the exclusive right to file and administer the settlement of any claim made against an Association policy.

Section 9.8 Procedures for 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, in accordance with Section 313(6) of the Act. Provided Declarant reimburses the Association for any additional premium payable on account thereof, insurance obtained by the Association shall, to the extent reasonably possible, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Section 9.9 Owners' Policies. Insurance policies issued to the Association do not eliminate the need for Owners to obtain insurance for their own benefit. Therefore, Owners shall carry, at their own expense, insurance to cover losses and damages not covered by the blanket insurance carried by the Association. Additionally, Owners may carry such other insurance for their own benefit and at their own expense as they may deem appropriate, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by any Owner. Insurance coverage on improvements and fixtures installed by an Owner and on furnishings, including carpeting and other floor coverings, draperies, oven, range, refrigerator, wallpaper, disposal and other items of personal property belonging to an Owner, and public liability coverage within each Unit shall be the sole and direct responsibility of the Owner thereof, and the Executive Board, the Association, Declarant and/or the Managing Agent shall have no responsibility therefor. Similarly, Owners shall be responsible for insuring any items stored in any storage area, and for insuring any automobiles, motorcycles or other vehicles, any bicycles, and any parts and contents of any of the foregoing, which are parked within the Community, and the Executive Board, the Association, Declarant and/or the Managing Agent shall have no responsibility therefor.

Section 9.10 No Imperiling of Insurance. No Owner and no Owner's Related Users shall do anything or cause anything to be kept within the Community which might: (i) result in an increase in the premiums of insurance obtained for the Community; or (ii) cause cancellation of such insurance.

Section 9.11 Owner Caused Damages. If any loss or damage shall be caused to any person or property, including the Building or other Improvements, or to any Unit, due to the act or neglect of any Owner or such Owner's Related User, such Owner shall be liable and responsible for the same except to the extent that such damage or loss is covered by insurance obtained by the Association and the carrier of the insurance has waived its rights of subrogation against such Owner. The amount of any uninsured loss or damage may be collected by the Association from such Owner as a Default Assessment pursuant to Section 7.7.

ARTICLE 10
USE OF THE REAL ESTATE

Section 10.1 Residential Purposes. Each Owner shall be entitled to the exclusive ownership and possession of his or her Unit (including Parking Spaces allocated to the Unit as Limited Common Elements), subject to: (i) all applicable governmental rules, regulations, laws, ordinances and restrictions, and (ii) all provisions of the Governing Documents as though such restrictions are set forth in this Declaration. Each Unit shall be improved, used and occupied for private, residential single-family dwelling purposes only, and no such Unit shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence, each Unit shall be deemed to have been designed to accommodate safely a maximum of two occupants per bedroom. No Units or Common Elements shall be used for any business or commercial purposes whatsoever, except as otherwise provided in the Governing Documents.

Section 10.2 Restrictions Regarding Vehicular Parking, Storage, and Repairs.

10.2.1 Parking Spaces are restricted to the parking of vehicles in accordance with the Governing Documents.

10.2.2 Vehicular parking within the Community shall be regulated by the Executive Board. Common Elements which are denoted for guest parking or handicapped parking may only be used in the manner provided in the Rules, and no guest parking may be used by any occupant of a Unit.

10.2.3 No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event that the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the Owner thereof or shall be conspicuously placed upon the vehicle. If the abandoned or inoperable vehicle is not removed within seventy-two (72) hours after providing such notice, the Association shall have the right to remove the vehicle, and the owner thereof shall be solely responsible for all towing and storage charges.

10.2.4 No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted within the Community.

10.2.5 The following vehicles may not be parked or stored within the Community unless authorized in writing by the Executive Board: oversized vehicles, trailers, camping trailers, boat trailers, hauling trailers, boats or accessories thereto, trucks of 3/4 ton and greater, self-contained motorized recreational vehicles, or other oversized types of vehicles or equipment as prohibited by the Rules. Any such oversized vehicle may be parked as a temporary expedience for loading, delivery of goods or services, or emergency. This restriction shall not apply to trucks less than 3/4 ton in size nor shall it apply to commercial vehicles temporarily located within the Community which are necessary for construction or for the maintenance of the Common Elements, Units, or any Improvement.

Section 10.3 Transferability of Parking Spaces. Each Unit must be allocated one Parking Space as a Limited Common Element in accordance with Section 2.6 above. All Parking Spaces may be leased or licensed; provided, however, Parking Spaces may only be licensed or leased to an Owner and all such leases or licenses must expire upon the transfer of the lessor's or licensor's Unit.

Section 10.4 Leasing. 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. Owners shall have the right to lease their Units only under the following conditions:

10.4.1 All leases shall be in writing.

10.4.2 All leases shall provide that the terms of the lease and the tenant's occupancy of the Unit shall be subject in all respects to the provisions of the Association's Declaration, Articles of Incorporation, Bylaws, and Rules, as the same may be amended from time to time, and that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, said default to be enforceable by the Executive Board, the Owner/landlord, or both.

10.4.3 No lease shall be a term of less than six months.

10.4.4 Any Owner's right to lease is expressly conditional upon applicable Rules.

10.4.5 Any Owner who leases his or her Unit shall forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant/lessee.

First Mortgagees shall not be subject to the provisions of this Section 10.4 nor to any restrictions on leasing of Units.

Section 10.5 Timeshare Restrictions. TIMESHARE OF THE CONDOMINIUM COMMUNITY AS DEFINED UNDER COLORADO LAW IS PROHIBITED.

Section 10.6 Certain Work Prohibited. Owners are limited in the use of their Unit and the Community, as follows:

10.6.1 No Owner shall undertake any work, enhancements or alterations in his or her Unit which would jeopardize the soundness, health or safety of the Common Interest Community, impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Community, or impair any easements.

10.6.2 Structural alterations shall not be made by an Owner to the exterior portions of his or her Unit or to the Building, nor shall an Owner remove any additions, improvements or fixtures from the Building, without prior written approval of the Board.

10.6.3 No Owner may change the appearance of any of the Common Elements, including any Limited Common Elements appurtenant to such Owner's Unit, which are visible from the exterior of the Building or such Unit without prior written approval of the Board.

10.6.4 No Owner may change the appearance of any Parking Space, except as otherwise approved, in writing, by the Board.

10.6.5 No Owner shall hang, erect, affix or place anything upon any of the Common Elements.

Section 10.7 Guidelines. The Board may, in its sole discretion, publish or issue guidelines concerning window treatments, exterior doors, holiday or other decorations, and/or other matters as the Board determines. Whenever Board approval is required by Section 10.6, such approval shall not be unreasonably withheld.

Section 10.8 Limited Common Elements. Each Limited Common Element shall be: (i) appurtenant to the Unit with which the Limited Common Element is conveyed or assigned; (ii) used only for the purposes set forth in this Declaration; and (iii) used by the Owner(s) or Related User(s) to which such Limited Common Element is appurtenant in accordance with the Governing Documents.

Section 10.9 Reallocation of Limited Common Elements.

10.9.1 The allocation of a Limited Common Element shall not be altered without the written consent of all Owners whose Units are affected by such reallocation. No Limited Common Element or any rights thereto (other than revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant.

10.9.2 A Limited Common Element may be reallocated between or among Units after compliance with the procedure set forth in this Subsection 10.9.2. In order to reallocate Limited Common Elements between or among Units, the Owners of those Units, as the applicants, must submit an application for approval to the Executive Board, which application shall be executed by those Owners and shall include:

- (i) the proposed form for an amendment to the Declaration as may be

necessary to show the reallocation of limited common elements between or among Units;

- (ii) a deposit against attorney fees and costs (in an amount reasonably estimated by the Board) which the Association will incur in reviewing and effectuating the application; and
- (iii) such other information as may be reasonably requested by the Executive Board.

No allocation shall be effective without the approval of the Executive Board. The reallocation shall be effectuated by an amendment signed by the Association and by those Owners between and among whose Units the reallocation is made, which amendment shall be Recorded as provided by the Act. All costs and attorney fees incurred by the Association as a result of the application shall be the sole obligation of the Applicants. If any costs and fees incurred by the Association with regard to any such application are not paid within thirty (30) days after notice from the Association to the applicable Owners, the amount of such costs and fees shall become a lien against the appropriate Units as provided in this Declaration.

10.9.3 A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions in this Declaration made in accordance with C.R.S. §§ 38-33.3-205(1)(g). Any such allocation must be made by amendments to the Declaration prepared, executed and Recorded by the Declarant or the Association (as applicable).

Section 10.10 Use of Common Elements. Common Elements shall be used by Owners and their Related Users in accordance with the Governing Documents, including all Rules adopted by the Board. Common Elements shall not be used for storage purposes (except as incidental to a permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements, or storage areas designated by the Board), nor in any manner which shall increase the rate of insurance against loss by fire, or the perils of the extended coverage endorsement to the standard fire policy form used in Colorado, or bodily injury, or property damage liability insurance covering the Common Elements and improvements situated thereon may be, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

Section 10.11 Owners Liable for Damage. Each Owner shall be liable to the Association for all damage to the Common Elements and any improvements thereto, caused by such Owner or Related User. Each Owner shall be responsible for compliance with the provisions of the Governing Documents by his or her Related Users, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Governing Documents for any violation by the Owner or his or her Related Users.

Section 10.12 Pets. No animals of any kind may be raised, bred, kept or permitted within the

Real Estate with the exception of such "pets" as are permitted by the Board as set forth in the Rules. Providing the Board permits "pets," it shall not have the authority to permit more than an aggregate of two dogs, cats or other usual and common household pets (but not pigs); and further provided, however, those pets which are permitted to roam free, or which in the sole discretion of the Executive Board, endanger health, make objectionable noise or constitute a nuisance or inconvenience to the Owners may be removed from the Community by the Executive Board. No pets shall be kept, bred or maintained for any commercial purpose. Pets shall be registered, licensed and inoculated as required by law. Pets outside of a Unit shall be on a leash and under the direct control of its owner, and no pet shall be allowed to defecate or urinate on the Common Elements. Notwithstanding any provision in this Section 10.12 to the contrary, caged birds and aquarium fish may be kept in any Unit.

Section 10.13 No Noxious, Offensive, Hazardous or Annoying Activities. No light shall be emitted from any portion of the Common Interest Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Common Interest Community which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spotlights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Common Interest Community except with the prior written approval of the Executive Board. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Common Interest Community or a portion thereof shall be observed. Notwithstanding the weight and sound restrictions set forth in Subsection 7.4.8 below, all Owners acknowledge that: (i) it is usual in close living situations, such as in condominiums to hear noises from other Units or outside noises; (ii) sound tends to carry through pipes, air-conditioning, heating and ventilation systems, wood studs and flooring; (iii) sound transmission in a close setting is not uncommon, and is, in fact, expected; (iv) all Units will have hard surface flooring throughout; and that (v) all such sound transmissions do not constitute "noxious or offensive" activities which are subject to the prohibitions of this Section 10.13. Further, no activities of Declarant or its assignees which are reasonably necessary to the development and construction of improvements within this Common Interest Community shall be prohibited by this Section 10.13.

Section 10.14 Outside Antennae. There shall be no outside television, radio antennae or satellite dishes, poles or flag poles constructed, or maintained within the Community for any purpose, except as installed by the Declarant as part of the Community, and except as expressly allowed pursuant to the Rules as promulgated by the Board, which must be in accordance with the express terms of the Telecommunications Act of 1996.

Section 10.15 Use Causing Loss of Insurance. No Unit, Common Elements or Improvements shall be used in any manner which shall cause such Improvements to be uninsurable against loss by fire or the perils of an extended coverage endorsement to the Colorado standard fire policy form or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

ARTICLE 11
RESERVATION OF DEVELOPMENT RIGHTS,
ADDITIONAL RESERVED RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 11.1 Development Rights. The Declarant reserves the following Development Rights on all or any portion of the Real Estate in whatever order the Declarant, in its sole discretion, determines:

11.1.1 the right to add unspecified real property to the Real Estate in accordance with the Act and to subject it to the provisions of this Declaration;

11.1.2 the right to add (create) additional Common Elements (including, specifically, the right to allocate areas added to the Community as Common Elements), subdivide Units and to combine Units, to relocate boundaries between Units, to convert Units into Common Elements, to convert Common Elements into Units and to create Limited Common Elements;

11.1.3 the right to withdraw all or any portion of the Real Estate from the Community;
and

11.1.4 the right to exercise any development right reserved or allowed in the Act.

Section 11.2 Special Declarant Rights. Declarant hereby reserves the following Special Declarant Rights and Additional Reserved Rights:

11.2.1 Conveyance for Governmental Interests. The right to designate sites within any portion of the Real Estate for fire, police, water, drainage and utility facilities, parks, and other public facilities.

11.2.2 Acceptance of Vacation. The right to accept any alley vacated to the Association.

11.2.3 Completion of Improvements. The right to complete Improvements within and to the Common Elements and upon Units owned by the Declarant including the right to maintain temporary construction facilities within the Real Estate.

11.2.4 Exercise of Development Rights. The right to exercise any Development Right reserved in this Article 11, elsewhere in this Declaration or allowed in the Act.

11.2.5 Sales Management and Marketing. The right of the Declarant to maintain sales and management offices and the right to maintain signs advertising the Community upon Units or Common Elements, and the right to maintain sales and management offices within any Unit owned by the Declarant.

11.2.6 Construction Easements. The right of the Declarant to use easements through the Common Elements for the purpose of making Improvements within the Community and the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the Act and this Declaration.

11.2.7 Merger. The right to merge or consolidate the Community with one or more common interest communities.

11.2.8 Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member provided by this Declaration and the Act.

11.2.9 Amendment of Declaration and Map. The right to amend the Declaration and Map in connection with the exercise of any Development Right, Special Declarant Right or Additional Reserved Right and in accordance with the requirements of the Act.

Section 11.3 Additional Reserved Rights. In addition to the Special Declarant Rights reserved herein, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

11.3.1 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, utility and drainage facilities or areas which may or may not be a part of the Community for the benefit of the Owners and/or the Association.

11.3.2 Easements. The right to grant additional easements for the use, repair, or maintenance of drainage facilities or utilities, within the Community.

11.3.3 Leasing of Units. The right to lease or rent any and all Units it owns within the Community for any period of time (short-term or long-term) as Declarant determines in its sole discretion. Declarant hereby reserves the right to utilize any and all Units it owns within the Community as guest suites on such terms and conditions and for such duration as Declarant shall elect in its sole discretion.

11.3.4 Right to Repurchase. The Declarant expressly reserves the right to repurchase any Unit (and any Limited Common Elements appurtenant thereto) subject to this Declaration should the Owner provide written notice to the Declarant, under the following circumstances:

- (i) The Owner has requested the Declarant make certain repairs to the Unit at an expense in excess of ten percent (10%) of the purchase price of the Unit as shown on the deed conveying the Unit from the Declarant to the Owner.

- (ii) Within thirty (30) days after receipt of such written notice, the Declarant notifies the Owner that it is unwilling to cause such repairs to be made. Such notice must be accompanied by a form upon which the Owner may elect to waive all claims against the Declarant for the making of the repairs or sell the Unit to the Declarant at the purchase price described in Subsection 11.3.4(i) above (and in the latter event, closing shall occur at a mutually agreeable time and place within sixty (60) days after receipt by Declarant of the Owner's written election).
- (iii) If the sale occurs more than one year after the date of purchase described in Subsection 11.3.4(i) above, then the purchase price shall be the price at which the Declarant is selling Units similar to such Owner's Unit. If the Declarant is no longer selling Units similar to such Owner's Unit, then the purchase price shall be equal to the price most recently paid by a bona fide third-party purchaser of a similar Unit after deducting any real estate commission paid in connection with such sale.

If the Declarant repurchases a Unit, such purchase shall also include any Limited Common Element appurtenant to such Unit.

11.3.5 Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

Section 11.4 Rights Transferable. Any rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred recorded in the real property records of the City and County of Denver. Such instrument shall be executed by the transferor Declarant and the transferee. The rights transferred may then be exercised in compliance with the requirements of C.R.S. § 38-33.3-210 and C.R.S. § 38-33.3-209(6) without the consent of the Association, any Owner or any Mortgagee.

Section 11.5 No Further Authorizations Needed. The consent of Owners or First Mortgagees shall not be required for exercise of any reserved rights, and Declarant or its assignees may proceed without limitation at their sole option. Declarant or its assignees may exercise any reserved rights on all or any portion of the Real Estate in whatever order determined.

Section 11.6 Compliance with the Act. If Declarant or its assignee elects to exercise any rights reserved in this Declaration, that party shall comply with the Act.

Section 11.7 Legal Description. These Special Declarant Rights, Development Rights and Additional Reserved rights apply to the Real Estate described on Exhibit A and any unspecified real property which is added to the Real Estate.

Section 11.8 Interpretation. Recording of amendments to the Declaration and Map shall automatically:

11.8.1 Vest in each existing Owner the reallocated Allocated Interests appurtenant to his or her Unit; and

11.8.2 Vest in each existing Mortgagee the reallocated Allocated Interests appurtenant to the encumbered Unit. Upon the recording of an amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to the Community. All conveyances of Units thereafter shall be effective to transfer beneficial rights in the Common Elements whether or not reference is made to any amendment to the Declaration or Map. Reference to the Declaration and Map at in any instrument shall be deemed to include all amendments to the Declaration and Map without specific reference thereto.

Section 11.9 Termination of Development Rights, Special Declarant Rights and Additional Reserved Rights. The rights reserved to Declarant in this Article 11, for itself, its successors and assigns, shall expire seven (7) years from the date of recording this Declaration, unless these are: (i) extended as allowed by law; or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of these rights by Declarant.

ARTICLE 12 **APPOINTMENT ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner by his or her acceptance of the deed or other conveyance vesting in him or her an interest in a Unit does irrevocably constitute and appoint the Association with full power of substitution as his or her true and lawful attorney in his or her name, place and stead to: (i) deal with his or her Undivided Interest in the Common Elements; (ii) manage, maintain, improve and otherwise operate all Parking Spaces and such other real and personal property as may be acquired by the Association as attorney-in- fact for each Owner is the Undivided Interest in the Common Elements which is allocated to the Owner; and (iii) manage, maintain, improve and otherwise deal with such other portions of the Real Estate as may be necessary to effectuate the provisions of the Governing Documents.

ARTICLE 13 **AMENDMENT AND TERMINATION**

Section 13.1 Technical, Clerical, Typographical or Clarification Amendment. If either the Declarant or the Executive Board shall determine that any amendments to this Declaration or to the Map shall be necessary in order to make non-material changes, such as for the correction of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence of this Section 13.1, the Declarant shall have the right and power to make and execute any

such amendment during the Declarant Control Period, and thereafter the Executive Board shall have the right and power to make and execute any such amendments without obtaining the approval of any Owners. Each such amendment of this Declaration shall be made, if at all, by the Executive Board prior to the expiration of seven (7) years from the date this Declaration is Recorded.

Section 13.2 Necessary to Exercise Authority of Association Documents. In addition to the rights granted to the Declarant to execute amendments to this Declaration, the Executive Board shall have the authority to execute amendments to this Declaration or to the Map which are reasonably necessary in order to perform duties authorized by this Declaration.

Section 13.3 Amendment of Declaration by Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be changed or repealed, and any such provision added to or deleted from this Declaration at any time and from time to time upon approval of the Executive Board and sixty-seven percent (67%) of the total Voting Interests in the Association.

Section 13.4 Amendment Required by Mortgage Agencies. Prior to seven (7) years after recording of this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which the FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase Mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon filing a certificate, setting forth the amendment or repeal in full, in the Records.

Section 13.5 Recording of Amendments. To be effective, all amendments to or termination of this Declaration must be Recorded and must contain evidence of approval thereof. One method of satisfying the requirements of this Section 13.5 is to Record a certificate of the Secretary of the Association, certifying that Owners representing the requisite percentage of the Units have given their written consent to the amendment. The Secretary must further certify that originals of such written consent by Owners along with the Recorded amendment are in the corporate records of the Association and available for inspection. No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is Recorded.

Section 13.6 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration reserving development rights or for the benefit of the Declarant, or the assignees, shall not be effective unless Declarant, and its assignees, if any, have given written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant or its assignees of any certificate of amendment or repeal. The foregoing requirement for consent to any amendment or repeal shall terminate seven (7) years after the recording of this Declaration, or upon conveyance of one hundred percent (100%) of the Units to Owners other than the Declarant whichever occurs first.

Section 13.7 Unanimous Consent Required for Certain Amendments. No amendment may create or increase Special Declarant Rights, or change the formulas for determining Allocated Interests as set forth in Section 2.4 above, or reduce the percentage required to terminate the Community as set forth in Section 13.9 in the absence of unanimous consent of the Owners.

Section 13.8 Expenses. All expenses associated with preparing and recording an amendment to the Declaration shall be the sole responsibility of the Declarant in the case of an amendment pursuant to the exercise of rights reserved in this Declaration, and in all other cases, by the Association as a Common Expense.

Section 13.9 Termination. The Common Interest Community may be terminated upon an affirmative vote of the Owners holding 90% of the Allocated Interests approval of the Eligible Mortgagees as provided in Subsection 8.1.2 above , and in accordance with Section 38-33.3-218 of the Act.

ARTICLE 14 **GENERAL PROVISIONS**

Section 14.1 Enforcement. The Association, the Declarant and any Owner shall have the right to enforce by any proceedings at law or in equity, each covenant, condition, restriction and reservation, now or hereafter imposed by this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of this Declaration or of the Bylaws or Articles. Failure by the Association, the Declarant, or any Owner to enforce any covenant, condition, restriction or reservation contained in this Declaration shall not be deemed a waiver of the right to do so thereafter. In such action the court may award reasonable attorney's fees and costs to the prevailing party.

Section 14.2 Owner Compliance. Each Owner and his or her Related Users shall comply with the provisions of the Governing Documents and all local, state and federal laws. Failure to so comply shall permit an action to recover sums due for damages and injunctive relief, the levying of fines and other charges, and such Owner shall be liable for all attorneys fees and costs incurred by the Association.

Section 14.3 Registration by Owner of Mailing Address. Each Owner shall register a mailing address with the Association, and except for monthly or other periodic statements and other routine notices, all other notices or demands intended to be served upon an Owner (including, without limitation, notice of matters affecting the Community) shall be sent either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. In the event an Owner fails to register a mailing address with the Association as set forth herein, such Owner's registered mailing address shall be the mailing address of the Unit owned by such Owner. All notices, demands or other notices intended to be served upon the Executive Board or the Association shall be

sent certified mail, postage prepaid, to the office of the Association at such address as identified by the Association in writing to each Owner.

Section 14.4 Final Determination. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of any provision of this Declaration shall be made by the Executive Board and shall be final.

Section 14.5 Arbitration of Disputes.

14.5.1 Binding Arbitration. Any action, dispute, claim or controversy between the Declarant and the Association or between the Declarant and Owners, or between or among the Owners, or any of them, (but specifically excluding claims between and among the Owners and the Association), whether sounding in contract, tort or otherwise, and whether or not concerning an individual Unit or the Common Elements (the "Dispute" or "Disputes"), shall be resolved by binding arbitration as set forth in this Section 14.5. Such Dispute shall be resolved by arbitration in accordance with Title 9 of the U.S. Code, the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, et seq., and the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then in effect. The arbitrator's award shall be entered as a judgment in the appropriate court in the county in which the Community is located. In the event of any inconsistency between such rules and these arbitration provisions, these provisions shall supersede such rules. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceedings under this Section 14.5. The parties shall be entitled to conduct discovery as if the dispute were pending in a court of law in the State of Colorado. In any arbitration proceeding subject to these provisions, the arbitrator is specifically empowered to allow discovery and decide prehearing motions that are substantially similar to prehearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Except as otherwise provided, the arbitrator shall be selected in accordance with the Construction Industry Arbitration Rules of AAA. Any arbitrator selected under this Section 14.5 shall be knowledgeable in the area of the subject matter of the Dispute. Qualified retired judges shall be selected through panels maintained by AAA, by any court in which the site is located, or any private organization providing such services.

14.5.2 Stenographic Record. A stenographic record of the arbitration shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and appeals. The arbitrator's decision shall contain findings of fact and conclusions of law to the extent applicable, and the arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge. The statement of decision of the arbitrator upon all of the issues considered by the arbitrator is binding upon the parties, and upon filing of a statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the arbitrator shall be appealable as if rendered by a court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

14.5.3 Procedure. If any claim regarding defects in construction or negligence for failure to identify, discover or cure construction defects is made, each claim shall be specified with

particularity. Each location of any claimed defect must be identified, and all evidence supporting each claim, along with all repair methodologies and costs of repair, must be provided in advance of any request for mediation or arbitration.

Section 14.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Units and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado. This Declaration shall be considered to supplement the provisions of the Act, which provisions are incorporated herein by reference as though restated in this Declaration

Section 14.7 Severability. Should any provision in this Declaration be void or become unenforceable in law or equity by judgment or court order, the remaining provisions of this Declaration shall remain in full force and effect.

Section 14.8 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular; and words of one gender may be construed as denoting such other gender as is appropriate.

Section 14.9 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 14.10 Conflicts Between Documents. The Association Documents are intended to comply with applicable provisions of the Act. In case of conflict between the Association Documents and the provisions of the Act, the provisions of the Act shall control. In case of conflict between this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall control.

Section 14.11 Assignability. Declarant shall have the power to assign all or any of its rights under this Declaration to any other party without the consent of the Association or the Owners. In the event this assignment occurs and the assignee assumes the obligations and liabilities of the Declarant, the Declarant shall be relieved, discharged and released from all obligations under this Declaration, and such obligations shall pass to and be assumed by the assignee to the extent of any such assignment and assumption.

[signatures next page]

IN WITNESS WHEREOF, the undersigned, being herein, has executed this instrument the day and year first hereinabove written.

1145 ROSEMARY, LLC,
a Colorado limited liability company

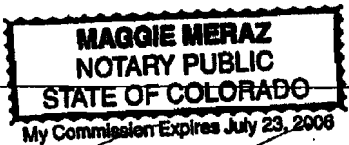

Danny DeGrande, Manager

STATE OF Colorado)
) ss:
____ COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 16 day of August, 2005, by Danny DeGrande, Manager of 1145 Rosemary, LLC, a Colorado limited liability company.

Witness my hand and seal.

My commission expires: _____




Notary Public

[SEAL]



EXHIBIT A

THE REAL ESTATE

**Lots 14 to 16, inclusive, and the North ½ of Lot 13, Block B, College Square
except the East 7 ½ feet thereof,
City and County of Denver
State of Colorado**

also known as: 1145 Rosemary Street, Denver Colorado 80220

EXHIBIT B

_____ LICENSES, EASEMENTS AND ENCUMBRANCES OF RECORD

The Real Estate is subject only to the following lien:

THE LIEN FOR REAL PROPERTY TAXES FOR 2005 AND SUBSEQUENT YEARS NOT YET
DUE AND PAYABLE.

EXHIBIT C

**THE REAL ESTATE INCLUDES THE FOLLOWING UNITS
AND ALLOCATED INTERESTS**

Unit No.	Voting Interest	Common Expense Liability/Undivided Interest in Common Elements (expressed as a percentage)
101	1	20.00
102	1	20.00
103	1	20.00
104	1	20.00
105	1	20.00
TOTALS: 5 Units	5 Votes	100.00 %