

**AMENDED AND RESTATED CONDOMINIUM DECLARATION  
FOR  
SHERWOOD MEADOWS**

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**AMENDED AND RESTATED DECLARATION  
FOR  
SHERWOOD MEADOWS**

THIS AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR SHERWOOD MEADOWS, a condominium community ("Declaration") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2004, revoking and superseding the Condominium Declaration for Sherwood Meadows recorded in Book 298 at Page 730 and the Supplemental Condominium Declaration for Sherwood Meadows recorded in Book 314 at Page 825:

**ARTICLE I**

**DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

1.1 Act. "Act" means the Colorado Common Interest Ownership Act, codified as amended at C.R.S. § 38-33.3-101, *et seq.*

1.2 Administrative Functions. "Administrative Functions" means all functions of the Association as are necessary and proper under this Declaration and the Act and shall include, without limitation, providing management and administration of the Association; performing the duties and obligations of the Association pursuant to Article V hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other such reasonable and ordinary administration tasks associated with operating the Association.

1.3 Allocated Interests. "Allocated Interests" means the number of votes and the percentage of liability for Common Expenses allocated to each Unit as set forth in Section 2.9 below

1.4 Articles of Incorporation. "Articles of Incorporation" means the Articles of Incorporation of Sherwood Meadows Association, Inc. that have been filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

1.5 Assessment. "Assessment" means any Common Assessment, Special Assessment, or Reimbursement Assessment as specifically defined below.

1.6 Association. "Association" means the Sherwood Meadows Association, Inc., a Colorado non-profit corporation, its successors and assignees.

1.7 Association Funds. "Association Funds" means the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article VI hereof.

1.8 Association Properties. "Association Properties" means all real and personal property: (a) now or hereafter owned by the Association including all Common Elements and Improvements; (b) with respect to which the Association holds an easement for the use, care, or maintenance thereof; or (c) for which the Association has a right or duty to maintain and which is held for the common use and enjoyment of the Members as provided herein, or for such other purposes as may be permitted by this Declaration.

1.9 Board of Directors. "Board of Directors" or "Board" means the Board of Directors of the Association.

1.10 Budget. "Budget" means a written, itemized estimate of the income to be derived and the expenses to be incurred by the Association in performing its functions under this Declaration. The Budget shall be prepared pursuant to Article VI of this Declaration.

1.11 Bylaws. "Bylaws" means the Bylaws of the Association as the same may be amended from time to time.

1.12 Common Assessment. "Common Assessment" means the assessments for Common Expenses levied by the Association against a Unit pursuant to this Declaration or the Act.

1.13 Common Element. "Common Element" means real property located within the Community designated on the Map as a Common Element or a Limited Common Element that is owned and maintained by the Association for the common use and enjoyment of the Owners.

1.14 Common Expense. "Common Expense" means any expenditure made, or liability incurred, by or on behalf of the Association, together with any allocations to reserves.

1.15 Community. "Community" means the residential community known as Sherwood Meadows as developed on the Property and made subject to the terms and provisions of this Declaration.

1.16 County. "County" means Eagle County, Colorado.

1.17 Declaration. "Declaration" means this instrument as it may be amended or supplemented from time to time.

1.18 Director. "Director" means a member of the Board of Directors.

1.19 Easements and Licenses. "Easements and Licenses" means all encumbrances, liens, restrictions, easements, and other items of record that affect the Community as set forth in Article VII below.

1.20 Governing Documents. "Governing Documents" means this Declaration, the Articles of Incorporation, the Bylaws, and any Rules and Regulations, as the same may be amended from time to time.

1.21 Improvement. "Improvement" means all structures and improvements located upon or made to Association Properties and any appurtenances thereto of every type or kind, including, but not limited to, buildings, outbuildings, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, roads, driveways, parking areas, fences, stairs, decks, fixtures, landscaping, hedges, windbreaks, landscape design, plantings, planted trees and shrubs, poles, signs.

1.22 Improvement to Property. "Improvement to Property" means any change, alteration, or addition to any Unit or property located within the Community.

1.23 Limited Common Element. "Limited Common Element" means any portion of the Community designated herein as a "Limited Common Element" and that is owned or maintained by the Association for the exclusive use of one or more Owners but fewer than all Owners.

1.24 Map. "Map" means the Condominium Map of Sherwood Meadows Phase I recorded January 24, 1980, in Book 297 at Page 857, and the Condominium Map of Sherwood Meadows Phase II recorded December 16, 1980, in Book 314 at Page 827. The Map depicts the Community and further depicts and locates thereon the location of Units and Common Elements. The Map, and the terms and provisions thereof, are hereby incorporated herein by reference. The term "Map" shall also include all amendments thereto.

1.25 Member. "Member" means the Person or, if more than one, all Persons collectively, who constitute the Owner of a Unit.

1.26 Mortgage. "Mortgage" means any mortgage or deed of trust or other such instrument given voluntarily by an Owner, that encumbers such Owner's Unit to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt.

1.27 Mortgagee. "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such Mortgagee.

1.28 Mortgagor. "Mortgagor" means the Person who mortgages his or its property to another (i.e., the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor or grantor under a Mortgage.

1.29 Owner. "Owner" means the Person, or if more than one, all Persons collectively, who hold fee simple title to a Unit, including sellers under executory contracts of sale and excluding buyers thereunder.

1.30 Person. "Person" means a natural person, a corporation, a partnership, a limited liability company, a limited liability partnership, a limited liability limited partnership or any other entity permitted to hold title to real property pursuant to Colorado law.

1.31 Property. "Property" means the real property legally described on Exhibit A attached hereto and incorporated herein by this reference.



1.32 Record or Recorded. "Record" or "Recorded" means the filing for record of any document in the office of the Clerk and Recorder of the County.

1.33 Reimbursement Assessment. "Reimbursement Assessment" means a charge against a particular Owner and such Owner's Unit for the purpose of reimbursing the Association for expenditures and other costs and expenses incurred by the Association that arise from or are related to any violation of the Declaration or the Rules and Regulations by an Owner, together with late charges and interest thereon as more fully set forth in Section 6.15 below.

1.34 Rules and Regulations. "Rules and Regulations" means rules and regulations adopted by the Board of Directors from time to time.

1.35 Special Assessment. "Special Assessment" means a charge against each Owner and such Owner's Unit representing a portion of the costs of the Association for the purpose of funding major capital repairs, maintenance, replacements, and Improvements pursuant to Section 6.14 below.

1.36 Unit. "Unit" means a physical portion of the Community that is designated for separate ownership or occupancy and the boundaries of which are depicted upon the Map. For the purposes of conforming the terms and provisions of this Declaration to the terms and provisions of the Act, the term "Unit" shall be analogous to the term "Unit" as that term is defined in the Act. The term Unit shall not include: (a) any property owned by a public body; or (b) Association Properties.

## **ARTICLE II**

### **COMMON ELEMENTS, UNITS, AND ALLOCATED INTERESTS**

2.1 Rights of Enjoyment of the Common Elements. Every Owner and tenant, and their respective family members, guests, invitees, and licensees shall have a perpetual right and easement of enjoyment in and to the Common Elements and those Limited Common Elements appurtenant to such Owner's Unit, if any, for the purpose of entering and exiting such Owner's Unit, parking areas, any recreational facilities, and public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit; provided, however, that such rights and easements shall be subject to the following:

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

(b) The right of the Association to suspend the voting rights for any period of time during which any Assessment against such Owner's Unit remains unpaid and for any period of time that the Association may deem to be appropriate for such Owner's infraction of this Declaration, the Articles of Incorporation, the Bylaws, or any written rule or regulation of the Association or any such infraction by such Owner's tenant, any member of such Owner's or tenant's family, or such Owner's or tenant's guests, licensees, or invitees;

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

2.2 Owner's Maintenance Responsibility, Liens, Unit Boundaries. For purposes of maintenance, repair, alteration and remodeling, an Owner shall be deemed to own the interior non-supporting walls, 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 subflooring) making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit, including the interior surfaces of Unit doors and windows and the handles and locks. The Owner shall not be deemed to own the exterior surfaces of windows and doors or the lines, pipes, wires, conduits or system (which for brevity are herein and hereinafter referred to as utilities) running through his Unit which serve one or more other Units except as a tenant in common with the other Owners. Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board of Directors. The right to repair, alter, maintain and remodel is coupled with the obligation to replace any finished or other materials removed with similar or other types or kinds of materials. An Owner shall maintain and keep in repair the interior of his own Unit, including the fixtures thereof. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair the structural soundness or integrity of the building or impair any easement or hereditament. An Owner shall not disturb, relocate or alter the Common Elements without the consent of the Board of Directors. An Owner shall also keep the balcony area appurtenant to his Unit in a clean and sanitary condition. All other maintenance or repairs to any Limited Common Elements, except as caused or permitted by an Owner's negligence, misuse or neglect thereof, shall be a common expense of all the Owners.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of the Unit Owner, his agent, contractor or subcontractor shall be the basis for filing of a lien against the Unit of any other Unit Owner not expressly consenting to or requesting same or against the General Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the General Common Elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

The following are designated as boundaries of each Unit:

(a) Upper boundaries. The horizontal plane and/or incline plane of the unfinished lower surface of the ceilings extended to an intersection with the vertical perimeter boundaries. Space above ceilings to which access is needed for repair and maintenance of the Unit and Common Elements above the Unit are Limited Common Elements to the Unit.

(b) Lower boundaries. The horizontal plane of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries.

(c) Vertical perimeter boundaries. The planes defined by the unfinished interior surface of all perimeter walls between adjoining Units, the exterior unfinished surface of doors to Common Elements, the exterior surface of closed exterior windows and doors, and the vertical planes indicated by boundary lines as shown on the Map.

2.3 Conveyance of Common Elements. The Common Elements may not be conveyed or encumbered except as permitted under the Act. Notwithstanding the foregoing, the granting of permits, licenses, and easements for public utilities or other purposes consistent with the intended use of the Common Elements or reasonably necessary or useful for the proper maintenance or operation of the Community will not be deemed to be a conveyance. The Association may convey or grant a security interest in portions of the Common Elements only in accordance with the provisions of Section 312 of the Act.

2.4 Limited Common Elements. Portions of the Community may be designated as Limited Common Elements herein. Subject to the terms and provisions of this Declaration, every Owner shall have the exclusive right to use and enjoy the Limited Common Elements, if any, appurtenant to his Unit. When a Limited Common Element is appurtenant to more than one Unit, the Owners of the Units to which it is appurtenant shall share the exclusive right to use and enjoy such Limited Common Element, and it shall not be partitioned from the Unit or Units to which it is reserved. No reference to a Limited Common Element may be or shall be required to be made in any deed, Mortgage, instrument of conveyance, or other instrument describing the Unit. The Association shall be required to maintain any such Limited Common Elements in accordance with the terms and provisions hereof relating to Association Properties, provided that any expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit to which such Limited Common Element is assigned.

2.5 Garages and Parking. The garages are within a part of the individual Units. The driveways connecting the garages to Association Properties are limited common elements appurtenant to each Unit. Garages shall not be converted to any other use without the prior written approval of the Board of Directors. Unless the Association specifically authorizes storage by an Owner, there shall be no storage or parking of snowmobiles, trailers, recreational vehicles, motorcycles, bicycles, motorbikes, or vehicles deemed by the Board of Directors to be too large upon any part of the Common Elements or Limited Common Elements. No vehicles shall be parked and nothing shall be placed or stored on the paved area providing access to the driveway of a Unit or any parking space. The Association shall have the right to designate any other portion of the Common Elements for parking purposes.

2.6 Identification of Unit/Units Descriptions. The identification of each Unit is shown on the Map. Every contract for sale, deed, lease, Mortgage, will, or other legal instrument shall legally describe a Unit by its identifying Unit number, followed by the name of the Community, subject to the easements and licenses of record including, without limitation, this Declaration.

2.7 Legal Effect of Description. Every contract, deed, lease, mortgage, deed of trust, will, and every other instrument affecting title to a Unit that legally describes said Unit substantially in the manner set forth in Section 2.5 hereof shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect the Unit, all other appurtenant

properties and property rights, and incorporate all of the rights, limitations, and burdens incidental to ownership of a Unit as described in this Declaration. Each such description shall be construed to include a nonexclusive easement for ingress and egress to and from each Unit and the use of all the Common Elements as well as all of the Limited Common Elements appurtenant to said Unit, all as more fully provided in this Declaration.

2.8 Taxation. Each Unit shall be assessed separately for all taxes, assessments, and other charges of the State of Colorado, any political subdivision thereof, any special improvement district, and any other taxing or assessing authority in accordance with Section 105 of the Act. For the purpose of such taxes and assessments, the valuation of the Common Elements shall not be separately assessed, but shall be apportioned among the Units in proportion to the Common Expenses liability appurtenant thereto and, to the extent feasible, the valuation of the Limited Common Elements shall be apportioned to the individual Unit or Units to which such Limited Common Elements are allocated. The Common Elements and other property owned by the Association, if any, shall be appraised and valued pursuant to the provisions of Section 105 of the Act. The Association shall furnish to the Tax Assessor of Eagle County, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit .

2.9 Allocated Interests. The Common Expense liability and votes in the Association allocated to each Unit are set as follows:

- (a) the following percentages of liability for Common Expenses

Units 1-A, 1-B, 1-C, 1-D	6.715%
Units 2-A, 2-B, 2-C	5.165%
Units 2-D, 2-E, 2-F	2.55%
Units 3-A, 3-B, 3-C, 3-D	6.715%
Units 4-A, 4-B, 4-C	5.165%
Units 4-D, 4-E, 4-F	2.55%; and

- (b) an equal vote in the Association for each Unit.

### **ARTICLE III**

#### **GENERAL RESTRICTIONS APPLICABLE TO COMMUNITY**

3.1 Maintenance of Community. No property within the Community shall be permitted to fall into disrepair, and all property within the Community, including any

Improvements, shall be kept and maintained in a clean, attractive, and slightly condition. Except as otherwise provided herein, the maintenance, repair, and upkeep of each Unit, the Association Properties, and the Improvements located thereon shall be the responsibility of the Association, as more particularly provided in Article V below. Owners shall be responsible for maintaining the interiors of their Units.

3.2 Liability of Owners for Damage by Member. Each Owner shall be liable to the Association for any damage to Association Properties or for any expense or liability incurred by the Association, to the extent not covered by insurance, that may be sustained by reason of (a) the actions or conduct of such Owner or any Person using the Association Properties through such Owner; or (b) for any violation of this Declaration, or any Rule and Regulation adopted by the Association, by such Owner or any such Person using the Association Properties through such Owner. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against an Owner, after Notice and Hearing, to cover all costs and expenses incurred by the Association arising from or related to violation of this Declaration, or the Rules and Regulations of the Association or for any increase in insurance premiums directly attributable to any of the foregoing actions.

3.3 Property Uses. All Units shall be used for residential purposes only, including uses that are customarily incidental thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his Residence for a professional or home occupation, as long as the applicable zoning ordinances permit such use, there is no associated customer or employee parking, there is no external evidence thereof, and no unreasonable inconvenience to other Owners is created thereby.

3.4 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

3.5 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community that is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property.

3.6 No Hazardous Activities. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Community that is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Community and no open fires shall be lighted or permitted on any property within the Community except in a contained gas barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

3.7 Garbage Removal. No refuse, garbage, trash, lumber, grass, shrub, tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse or debris of any kind shall be kept, stored, or allowed to accumulate within any Unit. Each Owner shall dispose of his or her

garbage by placing it into containers of such dimensions and at such locations as the Association shall from time to time designate. The garbage shall be removed by a garbage collection service provided by the Association.

3.8 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit, except that domesticated birds or fish and other small domestic animals permanently confined indoors will be allowed. No other animals, except an aggregate of not more than three domesticated animals (e.g., two cats and one dog), will be permitted within the Community; provided that they are not kept, bred, or maintained for any commercial purpose. No animal of any kind shall be permitted that in the opinion of the Board makes an unreasonable amount of noise or odor or is a nuisance. All household pets shall be controlled by their Owner and shall not be allowed outside the Owner's Unit except when properly leashed and accompanied by the pet Owner or such Owner's representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet.

3.9 Restrictions on Exterior Electronic Devices. Subject to applicable law, and subject to any Rules and Regulations, no exterior television or other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type ("Electronic Device") shall be erected, installed, or maintained on the Common Elements.

3.10 Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community so as to be evident to public view.

3.11 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community that may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

3.12 Compliance with Laws and Covenants. Nothing shall be done or kept on any property within the Community in violation of any private covenant that has been recorded against such property or any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Community.

3.13 Further Subdivision of Units. No Owner may further subdivide a Unit.

3.14 Storage. No building materials shall be stored in any Unit except temporarily during continuous renovation of a Unit.

3.15 Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on in the Community.

3.16 Storage of Gasoline and Explosives, Etc. No Unit shall be used for the storage of explosives, gasoline, or other volatile and/or incendiary materials or devices.

3.17 Trailers, Campers, and Junk Vehicles. No boat, snowmobile, camper (on or off supporting vehicles), trailer, tractor, truck, industrial or commercial vehicle (both cabs or trailers), towed trailer unit, motorcycle, disabled, junk, or abandoned vehicles, motor home,

mobile home, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting or commercial use, shall be parked or stored in, on, or about any Unit or street within the Community. For the purposes of this covenant, a 3/4-ton or smaller vehicle commonly known as a pickup truck shall not be deemed a commercial vehicle or truck. The Association shall have the right to enter a Unit to remove and store, at such Owner's expense, vehicles in violation of this Section 3.17. An Owner shall be entitled to 14 days' written notice prior to such action by the Association.

### 3.18 Leasing and Occupancy.

(a) Any lease or rental agreement shall be in writing, a copy of which shall be delivered to the Board or the Association's managing agent prior to the effective date of the lease, and shall provide that the lease or rental agreement is subject to the terms of the Governing Documents. All leases and rental agreements of a Residence shall state that the failure of the tenant, renter, or guest to comply with the terms of the Governing Documents shall constitute a default of the lease or rental agreement and of this Declaration, and such default shall be enforceable by either the Association or the landlord, or by both of them. All occupants of a Residence, whether lessees or guests of Owners, shall be subject to the right of the Association to remove and/or evict the occupant for failure of the occupant to comply with the terms of the Governing Documents.

(b) Except as restricted in this Declaration, and such Rules and Regulations as the Association may promulgate, the right to lease or allow occupancy of a Unit shall not be restricted

3.19 Title to Association Properties on Dissolution of Association. In the event of the dissolution of the Association, any Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental, or quasi-governmental agencies or organizations or to a nonprofit corporation, association, trust or other organization, to be used for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to the Owners in proportion to their respective Allocated Interests.

3.20 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof.

## **ARTICLE IV**

### **ASSOCIATION OPERATION**

4.1 Association. The Association shall have all duties, powers, and rights set forth in the Act, the Colorado Nonprofit Corporations Act, and in its Governing Documents.

4.2 Association Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws. The Board of Directors may, by resolution, elect to delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration.

4.3 Membership in Association. Each Owner of a Unit within the Community shall be a Member of the Association. There shall be one Membership in the Association for each Unit within the Community. The Person or Persons who constitute the Owner of a Unit shall automatically be the holder of the Membership appurtenant to that Unit, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Unit. Membership in the Association shall not be assignable separate and apart from the fee simple title to a Unit except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a Mortgagee or a tenant. An Owner may arrange for a tenant to perform some or all of such Owner's obligations under this Declaration, but no such arrangement shall relieve an Owner of the responsibility of fulfilling those obligations.

4.4 Voting Rights. Each Member shall have the right to cast one vote for each Unit owned by such Member in accordance with the Bylaws, provided in no event shall there be more than one vote per Unit. If title to a Unit is owned by more than one Person, such Persons shall collectively vote their interest as a single vote. Notwithstanding anything to the contrary contained herein, only Members whose voting rights are in good standing under the Association's Bylaws (e.g., voting rights which have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Members of the Association shall be deemed satisfied when the requisite percentage of Members entitled to vote has been met.

## **ARTICLE V**

### **DUTIES AND POWERS OF ASSOCIATION**

5.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board of Directors or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or



desirable to further the common interests of the Members, to maintain, improve and enhance the common interests of the Members, to maintain, improve and enhance Association Properties and to improve and enhance the attractiveness, aesthetics and desirability of the Community.

5.2 Association Management and Maintenance Duties. Subject to the rights and obligations of Owners as set forth in this Declaration, the Association shall:

(a) Be responsible for the management, control, maintenance, repair, replacement, and improvement of the Common Elements, including, but not limited to, drive ways, parking spaces, decks, terraces, fixtures, and other Limited Common Elements assigned or appurtenant to or providing exclusive service to individual Units, and any property owned by the Association;

(b) Perform exterior maintenance, repair, replacement, and modification to the Common Elements and other Improvements;

(c) Maintain and replace, as needed, the landscaping appurtenant to the Common Elements;

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

(e) Perform snow removal.

5.3 Duties upon Damage or Destruction of Association Properties. If any Association Property is damaged or destroyed by fire or other casualty, or if any governmental authority requires any repair, reconstruction, or replacement of any Association Property, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of the damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment against the Units in accordance with Article IV of this Declaration. If any Owner or group of Owners is culpable for any such damage, the Association may levy a Reimbursement Assessment against the Unit or Units of the culpable Owners to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such contracting and bidding procedures as the Association determines are appropriate. If insurance proceeds available to the Association exceed the cost of repair, reconstruction and replacement of any Improvement, the Association may use the same for any future maintenance, repair or replacement of any Improvement, and for the operation of other Association Properties.

#### 5.4 Common Expenses.

(a) The expenses, costs, and fees of such management, operation, maintenance, repair, replacement, and improvement incurred by the Association pursuant to Section 5.2 are Common Expenses that shall be recovered by the Association by the Common Assessments levied by the Association. The Association, in its reasonable discretion, may levy the costs and expenses associated with any of the following as a Reimbursement Assessment against the Owner of the Unit involved: expenses of maintaining, repairing, and replacing all, decks, fixtures, equipment, utilities, and any appurtenant Limited Common Elements to such Owner's Unit. Except for the Owners' right to reject the Budget as described in Section 6.11, the prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

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

5.5 Management Agreements and Other Contracts. The Association may have professional management of its business affairs. Any agreement for professional management of the Association's business shall have a maximum term of three years, and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than 90 days' prior written notice.

5.6 Access for Maintenance Purposes. Each Owner shall afford to the Association and the other Owners, and to their agents, contractors, or employees, access through such Owner's Unit reasonably necessary for maintenance, repair, and replacement of the Common Elements. If Common Elements or any Unit is damaged or destroyed in connection with such access or such maintenance, repair, or replacement, the party causing or responsible for the damage or destruction is liable for the cost of prompt repair of such damage or destruction.

5.7 Acquiring and Disposing of Real and Personal Property. The Association may acquire, lease, own, and hold for the use and benefit of all Owners, tangible and intangible personal property and real property (including the purchase or lease of a Unit that may be used as a manager's office and/or residence) for such uses and purposes as the Board may in its discretion deem appropriate from time to time, and may dispose of the same by sale or otherwise. Each Owner may use such personal and/or real property in accordance with the purposes for which such property is intended and in accordance with such conditions, limitations, restrictions, and rules and regulations as may be placed on any such property by the Board in its reasonable

discretion from time to time, provided that such use of any Owner shall not hinder or encroach upon the lawful rights of other Owners.

5.8 Promulgation of Rules and Regulations. The Board may promulgate and enforce, including, without limitation, enforcement by levying and collecting charges and fines for the violation thereof after affording an Owner a reasonable opportunity to be heard, reasonable rules and regulations governing the use of the Units, Common Elements, and any other property owned by the Association, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

5.9 Judicial Proceedings. The Association shall have no authority to initiate, maintain, or prosecute any legal or equitable proceeding except to enforce the provisions of this Declaration and to collect Assessments due and payable under Article IV hereof, unless the Owners approve such proceeding by a vote of at least 51% of all of the eligible votes in the Association cast in person, not by proxy, at a special meeting of the Association called for that purpose.

5.10 New Additions to Common Elements. The Association shall have the right to construct new additions to the Common Elements. The Common Expenses for any such additions to the Common Elements shall be apportioned among all Units as provided in Section 9.8 hereof.

5.11 Contracts, Licenses, and Agreements. The Association, through the Board, shall have the right to enter into, make, perform, or enforce (a) contracts, leases, licenses, agreements, easements, and/or rights-of-way, for the use by Owners, other persons, their family members, guests, and invitees, of real property for pedestrian and vehicular access, ingress and egress to and from the Community, or any portion thereof, for vehicular parking, for on-site residential management, or for recreational use, all of which shall be terminable by either party with or without cause upon 90 days' prior written notice; and (b) contracts, licenses, leases, or other agreements for the provision of cable or satellite telecommunication service to the Community, or any portion thereof. Any of such contracts, leases, licenses, agreements, rights-of-way, or easements shall be upon such terms and conditions as agreed to by the Board, and may include provisions by which the Association covenants and agrees that it shall pay part or all of the costs and expenses of maintaining such real property, and the improvements thereto and thereon, providing such cable or satellite telecommunication service, or other amounts which the Board determines are necessary to secure such contracts, licenses, and agreements. The Association shall treat any such costs and expenses as Common Expenses.

5.12 Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings that shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment and provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties that may accrue with respect thereto, if the contest of such taxes is unsuccessful.

5.13 Duty to Prepare Budgets. The Association shall prepare Budgets for the Association as provided in Section 6.11 of this Declaration.

5.14 Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as provided in Article IV of this Declaration.

5.15 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act, including, but not limited to, financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner.

5.16 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other such easements in, on, over, or under Association Properties, as well as the power to designate portions of the Association Properties as limited common elements for the benefit of specific Unit owners.

5.17 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

5.18 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community, including Units. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the Bylaws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

5.19 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each Person claiming by, through, or under such Member ("Related User"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community after Notice and Hearing (unless a bona fide emergency exists), without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and

enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension, after Notice and Hearing, of the voting rights of a Member during and for up to 60 days following any breach by such Member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for a period not to exceed 60 days from the date such breach is cured; (e) by levying and collecting a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (f) by levying uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member.

5.20 Power to Convey and Dedicate Property to Governmental Agencies. The Association, with the approval of Members representing at least 80% of the voting power of the Association entitled to vote, shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate.

5.21 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with the approval of Members representing at least 80% of the voting power of the Association entitled to vote, to encumber Association Properties as security for such borrowing, subject to provisions elsewhere contained in this Declaration with respect to required approvals and consents to such action. An agreement to convey Association Property or encumber Association Properties as a security interest in accordance with this Section and Section 5.20 above shall be evidenced by the execution of an agreement, or ratification thereof, by the requisite number of Owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date and shall be effective upon recordation.

5.22 Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for management, (e.g., management company), legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

5.23 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporations Act subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things that may be authorized, required, or permitted to be done under the Governing Documents and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under the Governing Documents.

5.24 Powers Provided by Law. In addition to the above-referenced powers, the Association shall have full power to take and perform any and all actions that may be lawfully taken by the Association under the Colorado Nonprofit Corporations Act and the Act, as the same may be amended from time to time.

## **ARTICLE VI**

### **ASSESSMENTS, BUDGETS, AND FUNDS**

6.1 Association Funds To Be Established. The Association shall establish and maintain the following separate Association Funds: (a) an "Operating Fund"; and (b) a "Reserve Fund." The Association Funds shall be established as one or more trust savings or trust checking accounts at any financial institution in which deposits are insured by an agency of the federal government.

6.2 Establishment of Other Funds. The Association may establish other funds as and when needed. Nothing herein shall limit, preclude or impair the authority of the Association to establish other funds for specified purposes authorized by this Declaration. If the Association establishes any additional funds, the Board shall designate an appropriate title for the fund to distinguish it from other funds maintained by the Association.

6.3 Deposit of Common Assessments to Association Funds. Monies received by the Association from Common Assessments shall be deposited in the Association Funds in accordance with the following provisions: (a) there shall be deposited in the Operating Fund that portion of the Common Assessments that, according to the Association Budget for the year, was budgeted for operating costs and expenses relating to or arising from the performance of Administrative Functions by the Association; and (b) there shall be deposited to the Reserve Fund that portion of the Common Assessments that were budgeted for capital repairs, replacements and improvements.

6.4 Other Deposits to Association Funds. The Association shall deposit monies received by the Association from sources other than Common Assessments in the Maintenance Fund determined by the Board of Directors to be most appropriate. For example, Reimbursement Assessments shall be deposited to the Maintenance Fund from which the costs and expenses were or will be paid which form the basis for the Reimbursement Assessments and Special Assessments for capital repairs, maintenance, replacements and Improvements shall be deposited to the Reserve Fund from which such capital costs have been or will be paid. Interest and late charges received on account of delinquent assessments may be allocated among the Association Funds in the same proportions as the delinquent assessments were allocated or, at the discretion of the Board of Directors, may be allocated to any one or more of the Association Funds or other funds.

6.5 Disbursements from Association Funds. All amounts deposited in the Association Funds shall be used solely for the common benefit of all the Members for purposes authorized by this Declaration. Disbursements from particular Association Funds shall be limited to specified purposes as follows: (a) disbursements from the Operating Fund may be made for such purposes as are necessary or proper under this Declaration, except those purposes

for which disbursements are to be made from other Association Funds; and (b) disbursements from the Reserve Fund shall be made solely for purposes of funding those Administrative Functions that cannot be expected to recur on an annual or more frequent basis.

6.6 Authority for Disbursements. The Board shall have the authority to make or to authorize an agent to make disbursements of any monies to or from any Maintenance Fund.

6.7 Common Assessments. For each calendar year, the Association may levy Common Assessments against Owners of the Units. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Unit of such Owner, as hereinafter provided.

6.8 Apportionment of Common Assessments. Except as otherwise expressly provided in this Declaration, all Assessments (including Special Assessments but excluding Reimbursement Assessments as hereinafter provided) shall be allocated among the Units in accordance with the Allocated Interests for each Unit set forth in Section 2.9 above.

6.9 Funding of Reserve Funds. The Board, in budgeting and levying Common Assessments, shall endeavor to fund the Reserve Fund by regularly scheduled payments included as part of the Common Assessments rather than by large Special Assessments.

6.10 Supplemental Common Assessments. Except as otherwise provided herein and to the fullest extent permitted by the Act, if the estimated sums contained in the Budget prove inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a Supplemental Common Assessment for any of the Association Funds. Such Supplemental Common Assessment shall be assessed against the Owner of each Unit, in the same manner Common Assessments are originally assessed each year by the Board with respect to the particular Maintenance Fund. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than 30 days prior to the effective date of such change.

6.11 Annual Budgets. The Board of Directors shall cause to be prepared, at least 60 days prior to the commencement of each calendar year, a Budget for such calendar year, including a reasonable provision for contingencies and deposits into the Operating Fund and the Reserve Fund. The Budget shall show, in reasonable detail, the categories of expenses and the amount of expenses in each Maintenance Fund, and shall reflect any expected income of the Association for the coming calendar year and any expected surplus from the prior year and any existing surplus in any Reserve Fund. The Budget may include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the proper Reserve Fund for major capital repairs, replacements, and improvements for Association Properties. Within 30 days after the adoption of any Budget by the Board, the Board shall cause a copy of the Budget to be distributed to each Member and shall set a date for a meeting of the Owners to consider ratification of the Budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Such meeting may be concurrent with the annual meeting of Members as provided in the Bylaws. Unless at that meeting a majority of the Owners reject the Budget, the Budget shall be deemed ratified, whether or not a quorum is present. In the event the Budget is rejected, the periodic Budget last ratified by the Owners must be

continued until such time as the Owners ratify a subsequent Budget proposed by the Board. At such time as the Association publishes a newsletter for Members, the Budget shall be published in such newsletter. Copies of the Budget shall be made available by the Association to any Members requesting a copy of the same upon payment of the reasonable expense of copying the same.

6.12 Payment of Assessment. Common Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in equal monthly installments, on or before the first day of each month of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments shall be given to each Member as soon as practical after the Budget has been ratified by the Members.

6.13 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any year shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

6.14 Special Assessments for Capital Expenditures. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this Section and to the fullest extent permitted by the Act, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to: (a) construct or reconstruct, repair or replace capital improvements upon Association Properties, including necessary personal property related thereto; (b) add to the Association Properties; (c) provide for necessary facilities and equipment to offer the services authorized in this Declaration; or (d) repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. Special Assessments for capital Improvements that may be used by all Members of the Association shall be levied solely on the basis of, and in proportion to, the Allocated Interest of an Owner. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

6.15 Reimbursement Assessments. The Board of Directors may, subject to the provisions hereof, levy a Reimbursement Assessment against any Member if the willful or negligent failure of a Member, or a Person acting by or through a Member, to comply with this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations results in the expenditure of funds by the Association including, but not limited to, additional maintenance, repair or replacement costs, court costs and attorneys' fees. Such Assessment shall be known as a Reimbursement Assessment. The amount of the Reimbursement Assessment shall be due and payable to the Association 30 days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is owing. A Member shall be entitled to Notice



and Hearing prior to the issuance of a Reimbursement Assessment against such Owner by the Association.

6.16 Late Charges and Interest. If any Assessment, or any installment thereof, is not paid when due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment, or installment of Assessment, which is not paid when due shall bear interest from the date such Assessment was due at a rate of 21% per annum or the highest rate permissible by law, whichever is less.

6.17 Surplus Funds. The Association shall not be required to pay, or otherwise refund to the Members, any surplus funds remaining after payment of, or provision for, Administrative Functions or reserves.

6.18 Notice of Default and Acceleration of Assessments. If any Assessment, or any installment thereof, is not paid when due, the Board of Directors may mail a notice of default ("Notice of Default") to the Owner and to each first Mortgagee of the Unit who has requested a copy of the notice. The Notice of Default shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; and (c) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current calendar year and the filing and foreclosure of the lien for the Assessment against the Unit of the Member. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

6.19 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by the filing and foreclosure of a lien as hereinafter provided.

6.20 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

6.21 Lien to Enforce Assessments. Pursuant to and in accordance with the Act, the Association shall have a statutory lien on a Unit for any Assessment levied against that Unit, or fines imposed against its Owner, from the time such Assessment or fine becomes due. All fees, charges, late charges, attorneys' fees, fines and interest outstanding from such Owner shall be included in such lien. The lien created hereby and under the Act shall have the priority attached to such lien under the Act. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. Unless paid or otherwise

satisfied, the lien may be foreclosed in the manner for the foreclosure of mortgages in the State of Colorado or in any other manner provided under Colorado law.

6.22 Estoppel Certificates. Upon the written request of any Member and any Person with, or intending to acquire, any right, title, or interest in the Unit of such Member, the Association shall furnish a written statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Unit and the Owner thereof, and setting forth the amount of any Assessment levied against such Unit that is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be conclusive against the Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

6.23 No Offsets. Except as provided herein, all Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

6.24 Assignment of Right to Future Income. The Board of Directors may, subject to the provisions of this Article VI and to the fullest extent permitted by the Act, assign the Association's right to future income, including the right to receive common expense assessments of any kind levied pursuant to this Article.

## **ARTICLE VII**

### **EASEMENTS AND LICENSES**

7.1 Encroachments. If any portion of the Common Elements encroaches upon any Unit(s), or if any portion of a Residence encroaches upon any other Unit(s), or any portion of the Common Elements, or if any encroachment occurs in the future as a result of: (a) shifting, settling, or other movement of any part of a building; (b) alteration, reconstruction, or repair to the Common Elements; or (c) repair or restoration of part of a building after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement is hereby created and does exist for the encroachment and for the maintenance of the same, as long as the encroachment exists.

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

7.3 Utilities. There is hereby created a blanket easement for the benefit of the Owners upon, across, and through the Common Elements for the installation, replacement, repair, and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment, and appurtenances on the Common Elements necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables,

circuits, conduits, and meters. The easement provided for in this Section 7.3 shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Common Elements.

7.4 Maintenance Easement. An easement is hereby granted to the Association and its officers, directors, agents, employees, and assignees upon, across, over, in, and under the Common Elements, and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions that the Association is obligated or permitted to perform pursuant to this Declaration.

7.5 Easements of Access for Repair, Maintenance, and Emergencies. Some of the Common Elements are or may be located within a Unit(s) or may be conveniently accessible only through a Unit(s). The Owners of other Unit(s) and the Association shall have the irrevocable right, to be exercised by the Association for itself and as agent of such Owners, to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal, or replacement of any of the Common Elements or any utility lines or pipes (whether or not Common Elements) located therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. Subject to the provisions of Sections 5.2 and 5.4 hereof, damage to a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Elements or as a result of emergency repairs within any Unit on the Association's initiative, shall be a Common Expense allocated in accordance with Sections 6.7, 6.10, or 6.11, as applicable. Damage to a Unit resulting from the installation, movement, repair, emergency repair, removal, or replacement of any utility lines or pipes not servicing more than one Unit shall be the expense of the Owner whose Unit such utility lines and pipes serve and such expense may be reimbursed through an Individual Purpose Assessment. Non-emergency repairs shall be made only during regular business hours on business days after 24 hours' notice to the occupants of the Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergencies, the occupants of the affected Unit shall be notified of impending entry as early as is reasonably possible.

7.6 Remodeling Easement. Each Owner shall have an easement in, upon, under, and across the Common Elements for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Elements in connection with the improvement or alteration of his or her Unit. Each Owner shall further have an easement and right to repair and maintain any utility lines and pipes serving only such Owner's Unit (and therefore not a Common Element) that are located within another Owner's Unit. Prior to repairing or maintaining any such utility lines or pipes, the Owner in whose Unit the lines or pipes are located will be given at least ten days' prior notice of the repair or maintenance.

## **ARTICLE VIII**

### **INSURANCE, CONDEMNATION, DESTRUCTION OR OBSOLESCENCE**

8.1 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable: (a) property insurance on all insurable Improvements and personal property owned or maintained by the Association for broad

form covered causes of loss, including casualty and fire; and (b) extended coverage insurance with respect to all insurable Improvements and personal property owned or maintained by the Association including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

8.2 Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Association Properties or the Association's maintenance obligations hereunder and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than \$500,000 per person and \$1,000,000 per occurrence; (b) insure the Board, the Association, the managing agent of the Association, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Owners as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (d) cover claims of one or more insured parties against other insured properties.

8.3 General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is cancelled or renewed without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered to all Owners. The Association may carry any other type of insurance it considers appropriate, in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant to this Article VIII shall provide that: (a) each Owner is an insured person under the policy with respect to liability arising out of such Owner's Allocated Interests in the Association Properties or membership in the Association; (b) the insurer waives its right of subrogation under the policy against the Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy, there is other insurance in the name of a Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. Insurance policies and insurance coverage shall be reviewed at least annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Properties and in light of the possible

or potential liabilities of the Association. In no event shall insurance coverage obtained or maintained by the Association be bought in conjunction with insurance purchased by Owners, occupants, or their Mortgagees.

8.4 Fidelity Bonds - Segregation of Funds. The Association shall obtain and keep in force at all times a fidelity bond or bonds for any person handling funds of the Association. Each such bond shall name the Association as obligee and shall be in an amount not less than \$50,000.00 or such higher amount as the Board of Directors may require. In addition to the foregoing, any Person or managing agent managing any funds or accounts of the Association shall keep such funds or accounts separate from the funds and accounts of other associations managed by such person or managing agent and maintain all reserve accounts of each association so managed separate from operational accounts of the Association. The person or managing agent maintaining the funds and accounts of the Association shall prepare an annual accounting for Association funds and a financial statement. Such documents may be prepared by the managing agent, a public accountant or a certified public accountant.

8.5 Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

8.6 Association Powers Upon Condemnation.

(a) If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by private purchase in lieu thereof, the award in condemnation or the price payable therefor shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Association Funds as determined by the Board as a reserve for future maintenance, repair, reconstruction or replacement of Association Properties or such funds may be used for Improvements or additions to or for the operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings related to Association Properties.

(b) Upon a taking of a Unit or a portion thereof by eminent domain, or upon partial condemnation or partial destruction of the Community, the Allocated Interests shall be reallocated according to the formulas set forth in Section 2.9 above.

8.7. Association as Attorney-in-Fact. This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction, for repair, reconstruction or obsolescence. Title to any Unit is declared and expressly made subject to the terms and conditions hereof and acceptance by any grantee of a deed or other instrument of conveyance from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint and have irrevocably constituted and appointed the Association their true and lawful attorneys in their name, place and stead for the purpose of dealing with the property upon its destruction or obsolescence as is

hereinafter provided. As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Unit Owner which is necessary and appropriate to exercise the powers herein granted.

(a) Repair and reconstruction of the improvement(s) as used in the succeeding sub-paragraphs means restoring the improvement(s) to substantially the same condition in which they existed prior to the damage, with each Unit and the general and Limited Common Elements having substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration, reconstruction or replacements unless the Owners and all first mortgagees agree not to rebuild in accordance with the provisions set forth hereinafter.

(b) In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvement(s), shall be applied by the Association, as attorney-in-fact, to such reconstruction and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

(c) If the insurance proceeds are insufficient to repair and reconstruct the improvement(s) and if such damage is not more than sixty percent (60%) of the total replacement cost of all of the Units in this project, not including land, such damage or destruction shall be promptly repaired and the Association Properties reconstructed by the Association, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made against all of the Owners in the condominium project and their Units. Such Deficiency Assessment shall be a common expense and shall be apportioned according to each Owner's percentage interest in the General Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of the improvement(s) using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in this Declaration. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association, as attorney-in-fact, pursuant to the provisions of this paragraph. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent (8%) per annum on the amount of the assessment and all reasonable attorneys fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order:

- (i) For the payment of taxes and special assessments liens in favor of any assessing entity and the customary expense of sale;

- (ii) For payment of the balance of the lien of any first mortgage;
- (iii) For payment of unpaid Common Expenses and all costs, expenses and fees incurred by the Association;
- (iv) For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
- (v) The balance remaining, if any, shall be paid to the Unit Owner.

(d) If the insurance proceeds are insufficient to repair and reconstruct the damaged improvement(s) and if such damage is more than sixty percent (60%) of all of the Units in the condominium project, not including land, and if the Owners representing an aggregate ownership interest of fifty-one percent (51%) or more, of the General Common Elements of the condominium project do not voluntarily, within one hundred (100) days thereafter, make provisions for reconstruction, which plan must have the unanimous approval or consent of every first mortgagee, the Association shall forthwith record a notice setting forth such fact or facts; and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire condominium project shall be sold by the Association pursuant to the provisions of this paragraph, as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The insurance settlement proceeds shall be collected by the Association and such proceeds shall be divided by the Association according to each Owner's percentage interest in the General Common Elements, and such divided proceeds shall be paid into separate accounts, each such account representing one of the Units. Each such account shall be in the name of the Association and shall be further identified by the Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall forthwith use and disburse the total amount (of each) of such accounts, without contribution from one account to another, toward the partial or full payment of the lien of any first mortgage against the Unit represented by such separate account. Each such account shall be supplemented by the apportioned amount of the proceeds obtained from the sale of the entire condominium project. Such sales proceeds shall be apportioned according to each Unit Owner's percentage interest in the General Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph (c) (1) through (5) of this paragraph.

If the Owners representing an aggregate ownership interest of fifty-one percent (51%) or more of the General Common Elements of the condominium project adopt a plan for reconstruction, which plan has the unanimous approval of all first mortgagees, then all of the Owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan shall be a common expense and made pro rata according to each Owner's percentage interest in the General Common Elements and shall be due and payable as provided by the terms of such plan,

but not sooner than thirty (30) days after written notice thereof. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the assessment. The assessment provided for herein shall be a debt of each Owner and a lien on his Unit and may be enforced and collected as is provided in this Declaration. In addition thereto, the Association, as attorney-in-fact, shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of eight percent (8%) per annum on the amount of the assessment and all reasonable attorneys fees. The proceeds derived from the sale of such Unit shall be used and disbursed by the Association, as attorney-in-fact, for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this paragraph.

(e) The Owners representing an aggregate ownership interest of sixty-seven percent (67%) or more, of the General Common Elements of the condominium project may agree that the Association Properties are obsolete and adopt a plan for their renewal and reconstruction, which plan has the unanimous approval of all first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded and the expense of renewal and reconstruction shall be payable by all of the Owners as common expenses; provide, however, that an Owner not a party to such a plan for renewal or reconstruction may give written notice to the Association within fifteen (15) days after the date of adoption of such plan that such Unit shall be purchased by the Association for the fair market value thereof. The Association shall then have thirty (30) days thereafter within which to cancel such plan. If such plan is not canceled, the Unit of the requesting Owner shall be purchased according to the following procedures: If such Owner and the Association can agree on the fair market value thereof, then such sale shall be consummated within thirty (30) days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate in writing, and give notice of such nomination to the other party, an appraiser. If either party fails to make such a nomination, the appraiser nominated shall, within five (5) days after default by the other party, appoint and associate with him another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Colorado, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of



their disagreement the decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within fifteen (15) days thereafter, and the Association, as attorney-in-fact, shall disburse such proceeds for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this paragraph, except as modified herein.

(f) The Owners representing an aggregate ownership interest of sixty-seven percent (67%), or more, of the General Common Elements of the condominium project may agree that the Units are obsolete and that the same should be sold. Such plan must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire premises shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Map and the Bylaws. The sales proceeds shall be apportioned between the Owners on the basis of each Owner's percentage interest in the General Common Elements, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall be in the name of the Association and shall be further identified by the unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts without contribution from one account to another for the same purposes and in the same order as is provided in sub-paragraph (b) (1) through (5) of this paragraph.

## **ARTICLE IX**

### **MISCELLANEOUS**

9.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2053, and thereafter shall be automatically extended for successive periods of ten years each unless terminated by the vote, by written ballot, of Members holding at least 67% of the voting power of Members of the Association entitled to vote. If this Declaration is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void unless recorded before such date. The Termination Agreement shall be recorded and the termination of this Declaration shall be effective upon such recording.

9.2 Amendment of Declaration. Except as otherwise provided in this Declaration and to the fullest extent permitted by the Act, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment by Members holding at least 67% of the voting power of the Association entitled to vote. The approval of any such amendment or repeal shall be evidenced by a certification executed by the requisite number of

Members. The amendment shall be effective upon the recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Members. Any amendment to the Declaration made hereunder shall be effective only when recorded.

9.3 Amendment of Articles and Bylaws. The Articles of Incorporation and Bylaws may be amended in accordance with the provisions set forth in such instruments or, in the absence of such provisions, in accordance with applicable provisions of the Colorado Nonprofit Corporations Act.

9.4 Special Rights of First Mortgagees. Any First Mortgagee (meaning a Mortgagee with first priority over other Mortgages) of a Mortgage encumbering any Unit in the Community, upon filing a written request therefor with the Association, shall be entitled to (a) written notice from the Association of any default by the Mortgagor of such Unit in the performance of the Mortgagor's obligations the Governing Documents which default is not cured within 60 days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within 90 days following the end of any fiscal year of the Association; (d) to receive written notice of all meetings of Members; (e) designate a representative to attend any meeting of Members; (f) receive immediate written notice as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties.

9.5 Priority of First Mortgage Over Assessments. Except for the priority granted to the Association for Assessments under the Act, each First Mortgagee of a Mortgage encumbering a Unit who obtains title to such Unit pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued prior to the time such holder acquires title to such Unit.

9.6 Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Unit to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

9.7 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, telephone, telecopier or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Unit of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

9.8 Persons Entitled To Enforce Declaration. The Association, acting by authority of the Board, and any Member of the Association entitled to vote shall have the right to

enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within the Community and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

9.9 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

9.10 Enforcement of Self-Help. The Association or its authorized agent may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration, provided such self-help is preceded by Notice and Hearing as set forth in the Bylaws.

9.11 Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property within the Community is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

9.12 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

9.13 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

9.14 Limitation on Liability. The Association, the Board of Directors, and any Member, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

9.15 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

9.16 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado.

9.17 Colorado Common Interest Ownership Act. If any of the terms and conditions of this Declaration are in conflict or inconsistent with the terms and conditions of the Act, the terms and conditions of the Act shall control. All terms and provisions contained herein, to the extent possible, shall be construed in accordance with the terms and provisions of the Act.

9.18 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

9.19 Number and Gender. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

9.20 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration.

9.21 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one plan.

9.22 Exhibit Incorporated. The Exhibit to this Declaration is incorporated herein and made a part hereof as if fully set forth herein.

IN WITNESS WHEREOF, the Association has caused this AMENDED AND RESTATED DECLARATION OF SHERWOOD MEADOWS to be executed by its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, 2004.

SHERWOOD MEADOWS  
ASSOCIATION, INC.  
a Colorado non-profit corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF                     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by \_\_\_\_\_ as \_\_\_\_\_ of Sherwood Meadows Association, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### Legal Description of Property

Lot 9, Block 1, Benchmark at Beaver Creek, Town of Avon, Eagle County, State of Colorado