

SUB-ASSOCIATION CONDOMINIUM DECLARATION FOR

THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH

(A Common Interest Community)

Association: The North Flats 2 Condominium Association

Declarant: Actarus, LLC, a Colorado Limited Liability Company

When recorded, return to:

Actarus, LLC
2614 S Timberline Rd, Suite 105, PMB 149
Fort Collins, CO 80525

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TABLE OF CONTENTS

RECITALS	1
ARTICLE 1. SUBMISSION OF REAL ESTATE	1
ARTICLE 2. DEFINITIONS	1
Section 2.1 Definitions	1
Section 2.1.1 Allocated Interests	2
Section 2.1.2 Approval or Consent	2
Section 2.1.3 Association	2
Section 2.1.4 Buildings	2
Section 2.1.5 Bylaws	2
Section 2.1.6 Common Elements	2
Section 2.1.7 Common Expense Liability	2
Section 2.1.8 Common Expenses	2
Section 2.1.9 Common Interest Community	2
Section 2.1.10 Condominium	2
Section 2.1.11 Declarant	2
Section 2.1.12 Declaration	2
Section 2.1.13 Dispose or Disposition	2
Section 2.1.14 Documents	2
Section 2.1.15 Executive Board	2
Section 2.1.16 Identifying Number	3
Section 2.1.17 Insurer	3
Section 2.1.18 Limited Common Elements	3
Section 2.1.19 Member	3
Section 2.1.20 Mortgagee	3
Section 2.1.21 Person	3
Section 2.1.22 Plat and Map	3
Section 2.1.23 Purchaser	3
Section 2.1.24 Real Estate	3
Section 2.1.25 Rules and Regulations	3
Section 2.1.26 Security Interest	3
Section 2.1.27 Unit	4
Section 2.1.28 Unit Owner or Owner	4
Section 2.2 Other Terms Defined in Act	4
Section 2.3 Other Terms in Declaration	4
ARTICLE 3. COMMON INTEREST COMMUNITY	4
Section 3.1 Name	4
Section 3.2 Association	4
Section 3.3 Condominium	4
Section 3.4 County	4
Section 3.5 Legal Description	4
Section 3.6 Maximum Number of Units	4
Section 3.7 Boundaries of Units	4

Section 3.8	Allocated Interests	5
Section 3.9	Recording Data	5
Section 3.10	Notice	5
ARTICLE 4. DESCRIPTION, CONVEYANCE, OWNERSHIP AND TAXATION OF CONDOMINIUM UNITS.		6
Section 4.1	Division of Property into Units	6
Section 4.2	Common Elements	6
Section 4.3	identification of Units	6
Section 4.4	Description of Unit	6
Section 4.5	Condominium Plat and Map	7
Section 4.6	Inseparability	7
Section 4.7	Taxation	7
Section 4.8	Form of Ownership - Title	7
Section 4.9	Non-Partitionability and Transfer of Common Elements	8
ARTICLE 5. ASSOCIATION		8
Section 5.1	Authority and Power	8
Section 5.2	Declarant Control.	8
Section 5.3	Executive Board Powers and Duties	8
Section 5.4	Professional Management and Contract Termination Provisions	9
Section 5.5	Executive Board Limitations	10
ARTICLE 6. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS		10
Section 6.1	Special Declarant Rights	10
Section 6.1.1	Completion of Improvements	10
Section 6.1.2	Exercise of Development Rights	10
Section 6.1.3	Sales Management and Marketing	10
Section 6.1.4	Construction Easement	10
Section 6.1.5	Merger	10
Section 6.1.6	Control of Association Executive Board	10
Section 6.2	Additional Reserved Rights	11
Section 6.2.1	Dedications	11
Section 6.2.2	Use Agreements	11
Section 6.2.3	Colorado Common Interest Ownership Act	11
Section 6.2.4	FHA/VA Requirements	11
Section 6.2.5	Other Rights	11
Section 6.3	Rights Transferable	11
ARTICLE 7. RESERVATION OF DEVELOPMENT RIGHTS		11
Section 7.1	Development Rights	11
Section 7.2	Amendment of Declaration	12
Section 7.3	Supplement to Plat and Map	12
Section 7.4	interpretation	12

Section 7.5	Maximums Number of Units	12
Section 7.6	Construction Easement	12
Section 7.7	Withdrawal Rights	13
Section 7.8	Termination of Development Rights	13
Section 7.9	Transfer of Development Rights	13
ARTICLE 8. COVENANT FOR ASSESSMENTS		13
Section 8.1	Creation of Lien and Personal Obligation for Assessments	13
Section 8.2	Purpose of Assessments	14
Section 8.3	Initial Annual Assessment	14
Section 8.4	Rate of Assessment	14
Section 8.5	Date of Commencement of Annual Assessments	15
Section 8.6	Meeting to Approve Annual Budget	15
Section 8.7	Special Assessments	15
Section 8.8	Notice and Quorum for Special Assessments	16
Section 8.9	Charges for Services to Less than All Units	16
Section 8.10	Lien for Assessments	16
Section 8.11	Priority of Association Lien	17
Section 8.12	Receiver	17
Section 8.13	Certificate of Status of Assessments	17
Section 8.14	Effect of Non-Payment of Assessments; Remedies of Association	17
Section 8.15	Surplus Funds	18
Section 8.16	Working Capital Fund	18
Section 8.17	Assessments for Misconduct	18
ARTICLE 9. LIMITED COMMON ELEMENTS		18
Section 9.1	Limited Common Elements	18
Section 9.2	Allocation of Reserved Limited Common Elements	19
Section 9.3	Allocation of Specified Common Elements	19
Section 9.4	Expense Allocation	19
ARTICLE 10. EASEMENTS		19
Section 10.1	Recorded Easements	19
Section 10.2	Encroachments	19
Section 10.3	Emergency Easement	20
Section 10.4	Access and Utility Easements	20
Section 10.3	Maintenance Easement	20
Section 10.6	Drainage Easement	20
Section 10.7	Easements of Access for Repair, Maintenance and Emergencies	20
Section 10.8	Easements Deemed Created	21
ARTICLE 11. RESTRICTIVE COVENANTS AND OBLIGATIONS		21
Section 11.1	Land Use	21

Section 11.2	Trash Collection	21
Section 11.3	No Hazardous Activities	22
Section 11.4	Vehicle Repair	22
Section 11.5	Signs	22
Section 11.6	Antennae	22
Section 11.7	Subdivision	22
Section 11.8	Occupancy of Residence	22
Section 11.9	Home Occupations	23
Section 11.10	Storage Tanks and Containers	23
Section 11.11	Restrictions on Leasing	23
Section 11.12	Insurance	23
Section 11.13	Discharge of Weapons	23
Section 11.14	Mineral Extraction	24
Section 11.15	Resubdivision	24
Section 11.16	Animals	24
Section 11.16.1	Definitions	24
Section 11.16.2	Prohibition	24
Section 11.16.3	Commercial Purposes	24
Section 11.16.4	Number	24
Section 11.16.5	Rabies Vaccinations	25
Section 11.16.6	Improper Care or Treatment	25
Section 11.16.7	Removal of Waste	25
Section 11.16.8	Animals at Large	25
Section 11.16.9	Disturbance of Peace	25
Section 11.16.10	Nuisance	25
Section 11.16.11	Vicious Animals	25
Section 11.17	Use of Common Elements	26
Section 11.18	Motor Vehicles on Common Elements	26
Section 11.19	General Prohibition	26
Section 11.20	Maintenance of Lots and Improvements	26
Section 11.21	Nuisance	26
Section 11.22	Temporary Structures	26
Section 11.23	Construction Facilities	27
Section 11.24	Storage of Vehicles	27
Section 11.25	Towing or Booting	27
Section 11.26	Damage or Destruction of Improvements	28
Section 11.27	Disturbing the Peace	28
Section 11.28	Unit Maintenance	28
Section 11.29	Rules and Regulations	28
Section 11.30	Master Declaration	28
Section 11.31	Exemption for Declarant	28
ARTICLE 12. INSURANCE		28
Section 12.1	Insurance	28
Section 12.2	General Provisions of Insurance Policies	29
Section 12.3	Deductibles	30
Section 12.4	Payment of Insurance Proceeds	30

Section 12.5	Association Insurance as Primary Coverage	30
Section 12.6	Acceptable Insurance Companies	31
Section 12.7	Insurance to be Maintained by Owners	31
Section 12.8	Annual Review of Insurance Policies	31
Section 12.9	Notice of Cancellation	31
ARTICLE 13. DAMAGE OR DESTRUCTION		31
Section 13.1	Damage or Destruction	31
Section 13.2	Use or Distribution of Insurance Proceeds	32
ARTICLE 14. MAINTENANCE, REPAIR AND RECONSTRUCTION OF COMMON ELEMENTS		32
Section 14.1	Maintenance of the Common Elements	32
Section 14.2	Association's Right to Repair, Maintain, Restore and Demolish	33
Section 14.3	Easement for Maintenance Access and Entry	33
Section 14.4	Owner's Negligence	34
Section 14.5	Construction Defects	34
Section 14.6	Arbitration	35
Section 14.7	Award	35
Section 14.8	Waiver of Tort and Related Damages	35
ARTICLE 15. MORTGAGEE PROTECTION		36
Section 15.1	Introduction	36
Section 15.2	Percentage of Eligible Mortgagees	36
Section 15.3	Notices of Actions	36
Section 15.4	Consent by 67% Required	36
Section 15.5	Consent by 51% Required	37
Section 15.6	Approval	38
Section 15.7	Development Rights	38
Section 15.8	Inspection of Books	38
Section 15.9	Financial Statements	38
Section 15.10	HUD or VA Approval	38
Section 15.11	Enforcement	38
Section 15.12	Attendance at Meetings	39
ARTICLE 16. GENERAL PROVISIONS		39
Section 16.1	Eminent Domain	39
Section 16.2	Enforcement	39
Section 16.3	Construction	40
Section 16.4	Duration	40
Section 16.5	Amendment	40
Section 16.6	Headings	41
RATIFICATION		42

EXHIBITS

Exhibit A	Legal Description of Real Estate	43
Exhibit B	Allocated Interests	44
Exhibit C	Easements and Licenses	45
Exhibit D	Legal Description of Expansion Property	47

**SUB-ASSOCIATION CONDOMINIUM DECLARATION FOR THE
NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH
(a Common Interest Community)**

THIS DECLARATION is made and entered into this 8th day of September, 2020, by ACTARUS, LLC, a Colorado Limited Liability Company, hereinafter referred to as the “**Declarant**”.

RECITALS

A. The Declarant is the owner of that certain real property located in the County of Larimer, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein by reference (“**Real Estate**”).

B. The Declarant desires to create a Condominium Common Interest Community on the Real Estate, pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time (“**Act**”), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interests.

C. The Declarant has caused to be duly incorporated under the laws of the State of Colorado THE NORTH FLATS 2 CONDOMINIUM ASSOCIATION, a nonprofit corporation for the purpose of exercising the functions herein set forth.

D. The Real Estate also has been of will be annexed to Old Town North in the City of Fort Collins, Larimer County, Colorado, and the Real Estate and all Buildings and Units under this Declaration will also become part of the Old Town North Community Association, Inc., a Colorado nonprofit corporation, (hereinafter referred to as the “**Master Association**”) under the Master Declaration of Covenants, Conditions and Restrictions for Old Town North recorded on September 21, 2005 at Reception No. 2005-0080157 of the Larimer County records, and any subsequent amendments thereto, hereafter collectively referred to as the “**Master Declaration.**”

ARTICLE 1. SUBMISSION OF REAL ESTATE

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, the Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act or in the Plat and Map of the Real Estate shall have the meanings provided in the following sections of this Article:

2.1.1 "Allocated Interests" shall mean and refer to the undivided interest in the Common Elements, Common Expense Liability, and votes in the Association.

2.1.2 "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.

2.1.3 "Association" shall mean and refer to THE NORTH FLATS 2 CONDOMINIUM ASSOCIATION, a Colorado nonprofit corporation, its successors and assigns.

2.1.4 "Buildings" shall mean and refer to the buildings containing Condominium Units as shown on the Plat and Map.

2.1.5 "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.

2.1.6 "Common Elements" shall mean and refer to all portions of the Common Interest Community other than the Units, and shall include, but not be limited to, all structural elements of the Buildings, foundations, party walls, bearing walls, roofs, and exterior cladding, including roofing, siding, flashing, windows, vents, and exterior doors.

2.1.7 "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

2.1.8 "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves. Common Expenses may include, but are not limited to, amounts payable by the Association to the Master Association pursuant to the Master Declaration, which expenses include, but are not limited to, those payable for maintenance services provided by the Master Association.

2.1.9 "Common Interest Community" shall mean and refer to the Real Estate and all improvements constructed thereon.

2.1.10 "Condominium" shall bear the same meaning as defined in C.R.S. §38-33.3-103(9).

2.1.11 "Declarant" shall mean ACTARUS, LLC, a Colorado Limited Liability Company, its successors and assigns.

2.1.12 "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats and maps of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

2.1.13 "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a Security Interest.

2.1.14 "Documents" shall mean and refer to this Declaration, the Plat and Map as recorded and filed, the Articles of Incorporation, the Bylaws, and the Rules and Regulations as they may be amended from time to time, together with any exhibit, schedule or certificate accompanying such Documents.

2.1.15 "Executive Board" shall mean and refer to the Executive Board of the Association as defined in the Bylaws.

2.1.16 "Identifying Number" shall mean and refer to a symbol or address that identifies only one (1) Unit in the Common Interest Community.

2.1.17 "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and who has provided written notice of such interest to the Association. An Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a First Security Interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Insurer be given the notices and other rights described in this Declaration.

2.1.18 "Limited Common Elements" shall mean and refer to a portion of the Common Elements allocated by this Declaration or by the operation of C.R.S. §38-33.3- 202(1)(b) or (1)(d) of the Act for the exclusive use of one (1) or more Units but fewer than all of the Units.

2.1.19 "Member" shall mean and refer to each Owner of a Unit in the Common Interest Community. Membership shall be appurtenant to, and may not be separated from, ownership of a Unit.

2.1.20 "Mortgagee" shall mean and refer to any Person who has a Security Interest in a Unit and who has provided written notice of such interest to the Association. The notice must include the Unit number and address of the Unit on which it has a Security Interest. Such notice shall be deemed to include a request that the Mortgagee be given the notices and other rights described in this Declaration.

2.1.21 "Person" shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

2.1.22 "Plat and Map" shall mean and refer to the Plat and Map of the Real Estate and all supplements and amendments thereto recorded in the office of the Clerk and Recorder of Larimer County, Colorado.

2.1.23 "Purchaser" shall mean and refer to a Person, other than the Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

(a) A leasehold interest in a Unit of less than forty (40) years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

(b) A Security Interest.

2.1.24 "Real Estate" shall mean and refer to the real property described on Exhibit "A" attached hereto and incorporated herein by reference, including structures, fixtures, and other improvements and interests that, by custom, usage or law, pass with a conveyance of land, though not described in the contract of sale or instrument of conveyance.

2.1.25 "Rules and Regulations" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

2.1.26 "Security Interest" shall mean and refer to an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term

includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. "First Security Interest" shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

2.1.27 "Unit" shall mean and refer to a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration and Plat and Map.

2.1.28 "Unit Owner" or "Owner" shall mean and refer to the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the owner of any Unit created in the Declaration until that Unit is first conveyed to another Person.

Section 2.2 Other Terms Defined in Act. Unless the context clearly indicates otherwise, other terms defined in the Act shall have the meanings attributable to such terms in the Act.

Section 2.3 Other Terms in Declaration. Other terms in this Declaration may be defined in specific provisions contained herein and shall have the meaning assigned by such definition.

ARTICLE 3. COMMON INTEREST COMMUNITY

Section 3.1 Name. The name of the Common Interest Community is THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH.

Section 3.2 Association. The name of the Association is THE NORTH FLATS 2 CONDOMINIUM ASSOCIATION.

Section 3.3 Condominium. The Common Interest Community is a Condominium. The Common Interest Community is a part of Old Town North.

Section 3.4 County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

Section 3.5 Legal Description. A legal description of the Real Estate included in the Common Interest Community is set forth on Exhibit "A" attached hereto and incorporated herein by reference.

Section 3.6 Maximum Number of Units. The maximum number of Units the Declarant reserves the right to create within the Common Interest Community is twenty (20).

Section 3.7 Boundaries of Units. The boundaries of each Unit are located as shown on the Plat and Map and are more particularly described as follows:

3.7.1 Any interior portion of the structural walls or demising walls between the two Units shall constitute a portion of the applicable Unit, (For example, drywall or other treatment attached to the interior demising or structural walls shall constitute a portion of the Unit. Exterior portions of the structural walls are not considered a portion of the Unit);

3.7.2 Anything above the structural portion of the floor (for example above concrete slab or joists) shall constitute a portion of the Unit;

3.7.3 That portion of the ceiling which is interior to the ceiling beams or trusses (including conduit wires below the trusses) shall constitute a portion of the applicable Unit;

3.7.4 Any fixtures within a Unit, including delivery systems and apparatus for utilities, heating, hot water, plumbing, air conditioning exclusively serving a Unit, whether or not located within the boundaries of the Unit, shall constitute a portion of the Unit. (For example, HVAC systems which serve only one Unit, shall constitute a portion of the Unit and the repair and replacement thereof shall be the responsibility of the applicable Owner and shall not be considered a Common Expense).

Section 3.8 Allocated Interests. The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association shall be allocated among the Owners as follows:

3.8.1 For each Unit, the Owner's share of the undivided interest in the Common Elements and Common Expenses shall be equal to a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Units within the Common Interest Community.

3.8.2 Each Owner of a Unit shall be entitled to One (1) vote for each Unit owned. The Owners' voting rights in the Master Association shall be as specified in the Master Declaration.

3.8.3 The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association for each Unit are set forth on Exhibit "B" attached hereto and incorporated herein by reference.

Section 3.9 Recording Data. All easements and licenses to which the Common Interest Community is presently subject are described on the Plat and Map and/or Exhibit "C" attached hereto and incorporated herein by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant pursuant to the terms of this Declaration.

Section 3.10 Notice. Notice of matters affecting the Common Interest Community may be given to Owners by the Association or by other Owners in the following manner: notice shall be (i) hand delivered, or (ii) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, or (iii) provided via email to any Owner who has requested that the Association provide notice via email and has provided the Association with a valid email address. Such notice shall be deemed given when hand delivered, when deposited in the United States Mail, or when sent electronically to a valid email address.

ARTICLE 4. DESCRIPTION, CONVEYANCE, OWNERSHIP AND TAXATION OF CONDOMINIUM UNITS

Section 4.1 Division of Property into Units. The Declarant intends, but is not obligated, to ultimately divide the Real Estate, including the improvements thereon, into twenty (20) fee simple estate Units, containing five (5) Units in each of four (4) Buildings to be constructed upon the Real Estate. Initially, upon the recording of this Declaration, the Real Estate, including the improvements thereon, are divided into five (5) fee simple estate Units containing five (5) Units in one (1) Building constructed upon the Real Estate. Each Unit shall consist of a separately delineated Unit in accordance with Article 3, Section 3.7 hereof, and an undivided interest in and to the Common Elements appurtenant to such Unit. The undivided interest in the Common Elements appurtenant to each of the initial Units are set forth on Exhibit "B" attached hereto and incorporated herein by reference. The Declarant expressly reserves the right to create such additional Units and Common Elements, and to subdivide the additional Units and to convey Common Elements into Units, all as more fully provided in Article 7 hereinafter. The creation of "Time Share Estates" as said term is defined in the Colorado Condominium Ownership Act (i.e., C.R.S. §38-33-101, et seq. as amended) is hereby expressly prohibited.

Section 4.2 Common Elements. Subject to the right of the Association to adopt reasonable, non-discriminatory and uniform rules and regulations regarding usage, all of the Owners of Units in this Common Interest Community shall have a non-exclusive right in common with all of the other Owners of Units to use the Common Elements within the Common Interest Community, including, but not limited to, sidewalks and open spaces located within the Common Interest Community. In addition to rights of use described in this Declaration, the Association, its Executive Board, and its managers shall have an unrestricted irrevocable easement to traverse, cross and utilize any portion of the Common Elements which may be necessary in order to maintain, repair or replace general Common Elements and/or Limited Common Elements. Except as specifically herein required, no reference thereto need to be made in any instrument of conveyance or other instrument in accordance with Section 4.4 of this Article 4.

Section 4.3 Identification of Units. The Identifying Number of each Unit shall be shown on the Plat and Map.

Section 4.4 Description of Unit.

4.4.1 Every contract for the sale of a Unit written prior to the recordation of the Plat and Map and this Declaration may legally describe the Unit by its identifying Building and Unit designation, followed by the words "THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH." The location of such Buildings and Units shall be depicted on the Plat and Map subsequently recorded in the County of Larimer, State of Colorado. Such description shall be conclusively presumed to relate to the thereon described Units.

4.4.2 After the Plat and Map and this Declaration have been recorded in the Office of the Clerk and Recorder of Larimer County, Colorado, every contract, deed, lease, Security Interest, trust deed, will or other instrument may legally describe a Unit as follows:

Condominium Unit _____, Building _____, THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH, in accordance with the Plat and Map of THE NORTH FLATS CONDOMINIUMS AT OLD TOWN NORTH recorded on 12/11/2007, at Reception No. 2007-0093043 and subject to the SUBASSOCIATION CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH

recorded on _____, 2020, at Reception No. _____ of the Larimer County, Colorado records, and further subject to the Master Declaration of Covenants, Conditions and Restrictions for Old Town North recorded on September 21, 2005 at Reception No. 2005-0080157 of the Larimer County records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit, but also the undivided interest in the Common Elements appurtenant to said Unit and all other appurtenant properties and property rights, and incorporate all of the rights and burdens incident to ownership of a Unit and all of the limitations thereon as described in this Declaration and the Plat and Map. Each such description shall be construed to include a non-exclusive easement for use of all of the Limited Common Elements appurtenant to said Unit as well as all the general Common Elements. The means of description specified in this Section 4.4.2 is not the exclusive means of legally describing a Unit, and is not mandatory.

4.4.3 The reference to the Plat and Map and Declaration in any instrument shall be deemed to include any amendment to the Plat and Map or Declaration, without specific references thereto.

Section 4.5 Condominium Plat and Map. Subject to the limitations contained herein, the Plat and Map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the Buildings and other improvements are substantially completed or as already constructed Buildings are added to the Plat and Map. Each section of the Plat and Map filed subsequent to the first or initially filed section shall be a supplement and a numerical sequence of such supplements shall be shown thereon. The Plat and Map, or any part of a section thereof depicting Units, shall not be filed for record until an independent licensed or registered engineer, surveyor or architect shall have certified that all structural components of all Buildings containing or comprising any Units thereby created are substantially completed in accordance with the provisions of the Act.

Section 4.6 Inseparability. Each Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every transfer, conveyance, lease, devised, encumbrance or other disposition of a Unit shall be deemed to be a transfer, conveyance, lease, devise, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations created by law or by this Declaration.

Section 4.7 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 the Act. For purposes of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Larimer, 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.

Section 4.8 Form of Ownership - Title. A Unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado. The right of any Owner to sell, transfer or otherwise convey his Unit shall not be subject to any right of first refusal in the Declarant.

Section 4.9 Non-Partitionability and Transfer of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. By acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this section may be pled as a bar to the maintenance of such an action. Any violation of this section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs, expenses and all damages which the Association incurs in connection therewith.

ARTICLE 5. ASSOCIATION

Section 5.1 Authority and Power. The business and affairs of the Common Interest Community shall be managed by the Association. The administration of the Common Interest Community shall be governed by this Declaration, the Act, the Articles of Incorporation, the Bylaws and published Rules and Regulations of the Association. The Association shall have all of the powers, authority and duties permitted pursuant to the Documents and the Act which are necessary and proper to manage the business and affairs of the Common Interest Community.

Section 5.2 Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of twelve (12) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of C.R.S. §38-33.3-303(5) of the Act.

Section 5.3 Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration or the By-laws. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association, which shall include, but not be limited to, the following:

- 5.3.1 Adopt and amend Bylaws.
- 5.3.2 Adopt and amend Rules and Regulations.
- 5.3.3 Adopt and amend budgets for revenues, expenditures and reserves.
- 5.3.4 Collect assessments from Owners.
- 5.3.5 Hire and discharge managing agents.
- 5.3.6 Hire and discharge independent contractors, employees and agents, other than managing agents.
- 5.3.7 Institute, defend or intervene in litigation or administration proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Unit Owners on any matters affecting the Common Interest Community.

5.3.8 Make contracts and incur liabilities.

5.3.9 Regulate the use, maintenance, repair, replacement and modification of the Common Elements.

5.3.10 Cause additional improvements to be made as a part of the Common Elements.

5.3.11 Acquire, hold, encumber and convey in the Association's name, any right title or interest to real estate or personal property, but the Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and applicable law.

5.3.12 Grant easements for any period of time, including permanent easements, leases, licenses and concessions through or over the Common Elements.

5.3.13 Impose and receive a fee or charge for the use, rental or operations of the Common Elements and for services provided to Owners.

5.3.14 Impose a reasonable charge for late payment of assessments and levy a fine for violation of this Declaration, the Bylaws and the Rules and Regulations of the Association.

5.3.15 Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.

5.3.16 Provide for the indemnification of the Association's officers and the Executive Board and maintain directors' and officers' liability insurance.

5.3.17 Assign the Association's right to future income, including the right to receive Common Expense assessments, only upon the affirmative vote of the Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.

5.3.18 Exercise any other powers conferred by the Documents.

5.3.19 Exercise any other power that may be exercised in the State of Colorado by a legal entity of the same type as the Association.

5.3.20 Exercise any other power necessary and proper for the governance and operation of the Association.

5.3.21 By resolution, establish permanent and standing committees of directors to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by any Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 5.4 Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause, and without payment of a termination fee, upon thirty (30) days' prior written notice. Any management contracts, employment contracts or leases

of recreational or parking areas or facilities entered into by the Association while there is Declarant control of the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, upon thirty (30) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto without cause and without payment of a termination fee upon thirty (30) days' prior written notice. In addition, any management agreements entered into by the Association with a manager or managing agent prior to the termination of the period of Declarant control shall and subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one (1) or more First Security Interests.

Section 5.5 Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine their qualifications, powers and duties or the terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term pursuant to the Bylaws.

ARTICLE 6. SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

Section 6.1 Special Declarant Rights. Declarant hereby reserves the right for a period of twelve (12) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the rights hereinafter specified ("Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

6.1.1 Completion of improvements. The right to complete or make improvements indicated on the Plat and Map, whether or not it has been recorded.

6.1.2 Exercise of Development Rights. The right to exercise any Development Rights reserved in Article 7 of this Declaration.

6.1.3 Sales Management and Marketing. The right to use the Common Elements, to the exclusion of the Owners, as sales and management offices. The right to maintain other sales offices, management offices, and signs advertising the Common Interest Community.

6.1.4 Construction Easement. The right to use the Common Elements for the purpose of making improvements and to provide access within the Common Interest Community or within the Real Estate. The right to construct and complete the construction of Units, utilities, entrance signage, landscaping, Buildings, streets, roads, driveways, parking lots, drainage and all other improvements on the Real Estate and to repair and maintain the Common Elements.

6.1.5 Merger. The right to merge or consolidate a Common Interest Community with another Common Interest Community of the same form of ownership.

6.1.6 Control of Association Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member, subject to the limitations of C.R.S. §38-33.3-303(5) of the Act.

Section 6.2 Additional Reserved Right. In addition to the Special Declarant Rights set forth in Section 6.1 above, Declarant also reserves the following additional rights ("Additional Reserved Rights"):

6.2.1 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, and parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Owners within the Common Interest Community.

6.2.2 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, which may or may not be a part of the Common Interest Community for the benefit of the Owners and/or the Association.

6.2.3 Colorado Common Interest Ownership Act. The right to amend this Declaration to comply with the requirements of the Colorado Common Interest Ownership Act in the event any provision contained herein does not comply with the Act.

6.2.4 FHA/VA Requirements. The right to amend this Declaration in connection with the exercise of any Special Declarant Rights, Additional Reserved Rights or Development Rights or in connection with the qualification or continued qualification for FHA or VA loan guarantees, and for compliance with FNMA, GNMA, FHLMC requirements or other available financing programs.

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

Section 6.3 Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 7. RESERVATION OF DEVELOPMENT RIGHTS

Section 7.1 Development Rights. The Declarant expressly reserves the right to add some or all of the real property legally described on Exhibit "D" attached hereto and by this reference incorporated herein (the "Expansion Property") to the Common Interest Community, and to create additional Units and Common Elements, to subdivide the Units and to convert Common Elements into Units on all or any portion of the Real Estate, and to withdraw portions of the Real Estate, all as specified in this Article 7 (collectively, the "Development Rights"). The maximum number of Units the Declarant reserves the right to create within the Common Interest Community, including the Expansion Property, is twenty (20). Any such additional Units to be added to the Common Interest Community shall be constructed of materials equal to or of greater quality than the original five (5) Units, and will be compatible architecturally and otherwise with the initial five (5) Units. The Declarant may exercise its Development Rights on all or any portion of the Real Estate in whatever order of development the Declarant, in its sole discretion, determines.

Section 7.2 Amendment of Declaration. As the Declarant adds some or all of the Expansion Property to the Common Interest Community and creates additional Units and converts Common Elements into Units on all or any portion of the Real Estate and the Expansion Property, the Declarant shall record an amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interest appurtenant to each Unit will be apportioned according to the total number of Units submitted to the Declaration. The Allocated Interest appurtenant to each Unit thereafter in the Common Interest Community shall be a fraction, the numerator of which shall be one (1) and the denominator of which shall be the total number of Units within the Common Interest Community.

Section 7.3 Supplement to Plat and Map. The Declarant shall, contemporaneously with an amendment to this Declaration reallocating the Allocated Interests in the Common Interest Community, file a supplement to the Plat and Map. Each supplemental Plat and Map tiled subsequent to the first Plat and Map shall be termed a supplement and a numerical sequence of such supplements shall be shown thereon. The Plat and Map or any part of a section thereof depicting Units shall not be filed for record until the Building in which the Units are located has been substantially completed in order to allow a certificate of completion executed by an independent licensed or registered engineer, surveyor or architect stating that all structural components of all Buildings containing or comprising any Units thereby created are substantially completed. Each supplement to the Plat and Map shall be filed for record prior to the conveyance of a Unit to a Purchaser which is included within such supplement.

Section 7.4 Interpretation. Recording of amendments to the Declaration in the office of the Clerk of Larimer County, Colorado, shall automatically (i) vest in each existing Owner the reallocated Allocated Interest appurtenant to his Unit and (ii) vest in each existing Mortgagee a perfected Security Interest in the reallocated Allocated Interests appurtenant to the encumbered Unit. Upon the recording of an amendment to the Declaration, the definitions in this Declaration shall automatically be extended to encompass and to refer to the additional Units included within the Common Interest Community. The additional Units shall be added to and become a part of the Common Interest Community for all purposes. All conveyances of Units after such action shall be effective to transfer rights in all Common Elements as modified, whether or not reference is made to any amendment to the Declaration. Reference to this Declaration in any instrument shall be deemed to include all amendments to the Declaration without specific reference thereto.

Section 7.5 Maximum Number of Units. The maximum number of Units in the Common Interest Community, including the Expansion Property, shall not exceed twenty (20) in total.

Section 7.6 Construction Easement. The Declarant expressly reserves the right to perform construction work, store materials on the Common Elements, and the future right to control such work and the right of access thereto until its completion. All work may be performed by the Declarant without the Consent or Approval of any Owner or Mortgagee. The Declarant shall have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations and exercising the Declarant reserved rights in this Declaration. Such easements shall include the right to construct underground utility lines, pipes, wires, ducts, conduits, television cable systems, and other facilities across the Common Elements for the purpose of furnishing utility and other services to newly created Units. The Declarant's reserved construction easement includes the right to grant easements to public and quasi-public utility companies and to convey improvements within those easements. If the

Declarant grants any such easements, the Plat and Map will be amended, if necessary, to include reference to the recorded easement.

Section 7.7 Withdrawal Rights. Declarant expressly reserves the right to withdraw all or any portion of the real property which Declarant owns from the Real Estate (the "Withdrawn Property") by recording a document evidencing such withdrawal in the real property records of Larimer County, Colorado. If a Withdrawn Property is removed from the Real Estate:

7.7.1 The owner of the Withdrawn Property shall have whatever easements arcecessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Real Estate; and

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

7.7.3 Declarant shall prepare and record in the real property records of Larimer County, Colorado, whatever documents are necessary to evidence such easements. Such recorded easement(s) shall specify that the owners of the Withdrawn Property and the Owners shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

Section 7.8 Termination of Developing Rights. The Development Rights reserved to the Declarant, for itself, its successors and assigns, shall expire twelve (12) years from the date of the recording of this Declaration, unless the Development Rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever conditions and limitations the Executive Board may impose upon the subsequent exercise of the Development Rights by the Declarant.

Section 7.9 Transfer of Development Rights. Any Development Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

ARTICLE 8. COVENANT FOR ASSESSMENTS

Section 8.1 Creation of Lien and Personal Obligation for Assessments. Each Owner, including the Declarant, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments and other charges, fines, fees, interest, late charges and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. The annual and special assessments and other charges, fees and fines, together with interest, late charges, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. The obligation for such

payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without setoff or deduction. All Owners of each Unit shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Unit. Each assessment, charge, fee and all other amounts under this Declaration, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person or Persons who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on a Unit for assessments and other amounts shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Unit subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said lien. The Master Association likewise has the power to levy assessments against Units and Owners thereof as provided in the Master Declaration. Expenses charged to the Association by the Master Association shall include, but are not limited to, expenses for maintenance services provided by the Master Association, if any.

Section 8.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Documents, or by law; provided, however, that such assessments levied during the period of Declarant control may not be used for the purpose of constructing capital improvements, but may be used to repair or reconstruct completed common improvements in the event of damage or destruction.

Section 8.3 Initial Annual Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the annual assessment, as provided below, the amount of the annual assessment against each Unit shall be computed at a rate not in excess of Two Hundred and no/100s Dollars (\$200.00) per Unit per month. The maximum assessment referenced in this Section 8.3 does not include any assessments imposed by the Master Association, which shall be in addition thereto. The Association shall collect assessments imposed by the Master Association, in addition to the Association's own assessments.

Section 8.4 Rate of Assessment. Annual and special assessments shall be fixed according to the Allocated Interests in an amount sufficient to meet the expected needs of the Association and to carry out the Association's maintenance responsibilities. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, including, but not limited to, private roads, curbs, gutters, sidewalks, drainage facilities, landscaping, and Common Elements, and for the payment of insurance deductibles. All assessments shall be assessed against all the Units in accordance with the Allocated Interests set forth in this Declaration. except as specifically elsewhere provided in this Declaration. If the Common Expense Liability is reallocated, annual assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated share of Common Expenses. The annual and special assessments referenced in this Section 8.4 do not include any assessments imposed by the Master Association, which shall be in addition thereto.

Section 8.5 Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Executive Board may determine in its discretion, the Declarant shall pay all Common Expenses. **Notwithstanding the foregoing, assessments shall commence no later than ten (10) days after the first Unit is conveyed by the Declarant to an Owner.** After any annual assessment has been made by the Association, annual assessments shall initially not be greater than the amount set forth in Section of this article, and thereafter shall be based on a budget adopted by the Association as provided below. A budget shall be adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Executive Board may determine in its discretion from time to time; provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association fiscal year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due. The annual assessments referenced in this Section 8.5 do not include any assessments imposed by the Master Association, which shall be in addition thereto.

Section 8.6 Meeting to Approve Annual Budget. At the annual meeting of the Association or at a special meeting of the Association called for such purpose, the Owners shall be afforded the opportunity to ratify a budget of the projected revenues, expenditures and reserves for the Association's next fiscal year as proposed by the Executive Board. A summary of the proposed budget approved by the Executive Board shall be mailed to the Owners within thirty (30) days after its adoption along with a notice of a meeting of the Association to be held not less than fourteen (14) nor more than fifty (50) days after mailing of the summary to the Owners (or, in the alternative, together with a ballot and information sufficient to satisfy the provisions of Section 109 of the Colorado Revised Nonprofit Corporation Act). Unless eighty percent (80%) of the total votes in the Association reject the proposed budget, the budget is ratified. There are no quorum requirements for this meeting. In the event the proposed budget is rejected, the budget last ratified by the Owners continues until such time as the Owners ratify a subsequent budget proposed by the Executive Board as provided above.

Section 8.7 Special Assessments. In addition to the annual assessments authorized in this Article, the Executive Board may levy, in any fiscal year, with the approval of the votes of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements or any property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed improvement, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with Section 8.8 of this Article 8. Notwithstanding the foregoing, special assessments levied during the period of Declarant control may not be used for the purpose of constructing capital improvements, but may be used to repair or reconstruct completed common improvements in the event of damage or destruction. The special assessments referenced in this Section 8.7 do not include any assessments imposed by the Master Association, which shall be in addition thereto.

Section 8.8 Notice and Quorum for Special Assessment. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.7 of this Article shall be sent to all Members not less than fourteen (14) days, nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the membership votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.9 Charges for Services to Less than All Units. The Association may, at any time from time to time, provide services to less than all of the Units, and the Owners of such Units shall pay the Association for such services as hereinafter provided, which amounts shall be in addition to the annual and special assessments. Any such services shall be provided, if at all, pursuant to an agreement in writing between the Association and the Owners of the Units for which such service(s) are to be provided, with such agreement to include a statement of the costs, fees and expenses reasonably expected to initially be incurred by the Association in providing such service(s), including overhead expenses of the Association. Services which may be provided by the Association pursuant to this section include, without limitation, (a) the construction, care, operation, management, maintenance, upkeep, repair, replacement and renovation of improvements or property owned by such Owner(s); (b) the provision of any services or functions to or for such Unit(s); (c) the enforcement of the provisions of any document or agreement for, on behalf of, and in the name of the applicable Owner(s); (d) the payment of taxes or other amounts for Owner(s) with funds provided by such Owner(s); and (e) the procurement of insurance for Owner(s). The Association may, at its election, at any time from time to time, collect the aforesaid costs, fees, expenses and other charges from Owners to whom such services are provided, in advance or arrears, in monthly or other installments, or in addition to and on the same date for payment of, the assessments.

Section 8.10 Lien for Assessments.

8.10.1 The Association has a statutory lien on a Unit for any assessment levied against that Unit or for fines imposed against its Owner. Fees, charges, late charges, attorneys' fees, fines and interest charged pursuant to this Declaration are enforceable as assessments under this Article. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

8.10.2 Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Executive Board or managing agent of the Association may prepare, and record with the Clerk and Recorder of Larimer County, Colorado, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Unit against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

8.10.3 A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of each unpaid assessment becomes due.

8.10.4 Unless the Declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same Unit, those liens have equal priority.

Section 8.11 Priority of Association Lien.

8.11.1 A lien under this Article 8 is prior to all other liens and encumbrances on a Unit except:

- (a) Liens and encumbrances recorded before the recordation of the Declaration;
- (b) A First Security Interest on the Unit, which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges against the Unit.

8.11.2 A lien under this Section is also prior to the First Security Interests described in the preceding Subsection 8.11.1(b) to the extent of an amount equal to the annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

8.11.3 This Section does not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association.

Section 8.12 Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments.

Section 8.13 Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to an Eligible Mortgagee or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board and every Owner. If no statement is furnished to the Owner or Eligible Mortgagee or their designee, then the Association shall have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

Section 8.14 Effect of Non-Payment of Assessments; Remedies of Association. Any assessment not paid within ten (10) days after the due date thereof may bear interest at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Executive Board, and the Executive Board may in addition assess thereon a late charge not in excess of Fifty Dollars (\$50.00) per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including, without limitation, in a foreclosure action, such judgment or decree shall include a reasonable attorneys' fee to be fixed by the court, together with the costs of the action, and may include interest and late

charges as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien or to prohibit the Association from taking a deed in lieu of foreclosure. The Master Association has similar enforcement rights.

Section 8.15 Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

Section 8.16 Working Capital Fund. The Association or the Declarant shall require the first Owner of any Unit who purchases that Unit from the Declarant to make a **non-refundable contribution to the Association in an amount equal to three (3) times the monthly installment of the annual assessment at the time of closing** (regardless of whether or not assessments have commenced as provided in Section 8.5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by the Declarant of each Unit and shall, until use, be maintained in the account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase additional equipment, property or services; provided, however, that the working capital fund shall not be used to defray any of the assessments, or any of the reserve contributions, which are payable by the Declarant to the Association, or to pay for construction costs, or to make up any budget deficits, during the period of Declarant control. Thereafter, upon each subsequent conveyance of any Unit by any Owner to the next third-party purchaser thereof, the purchaser shall make a non-refundable contribution to the Association in an amount equal to three (3) times the monthly installment of the annual assessment against the Unit in effect on the date of the delivery of the deed conveying such Unit. Such contributions to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall not be entitled to a refund from the Association for the aforesaid contributions to the working capital fund.

Section 8.17 Assessments for Misconduct. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that Common Expense exclusively against such Owner and his Unit.

ARTICLE 9. LIMITED COMMON ELEMENTS

Section 9.1 Limited Common Elements. "Limited Common Elements" means a portion of the Common Elements designated in this Declaration or on the Plat and Map or by the Act for the exclusive use of one (1) or more, but fewer than all, of the Units. In addition to those portions of the Common Elements described in C.R.S. §38-33.3-202(1)(b) and (1)(d) of the Act, the following are designated as Limited Common Elements: (a) various parking spaces (which shall be assigned to Units on the Plat and Map), (b) exterior windows and doors, (c) balconies, (d) patios, (e) roof top terraces, (f) stairways to upper Units, and (g) all Limited Common Elements which are noted on the Plat and Map which is incorporated herein by this reference.

Section 9.2 Allocation of Reserved Limited Common Elements. Portions of the Common Elements may be designated on the Plat and Map as "Common Elements which may be allocated as Limited Common Elements." The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which the specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of C.R.S. §38-33.3-208 of the Act by making such an allocation in a recorded instrument or in the deed to the Unit to which such Limited Common Element area shall be appurtenant or by recording an appropriate amendment or supplement to this Declaration. Such allocation by the Declarant may be to Units owned by the Declarant. The right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board, and the Declarant may not thereafter exercise any such right of allocation subsequent to the date which is twelve (12) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado.

Section 9.3 Allocation of Specified Common Elements. The Executive Board may designate part of the Common Elements from time to time for use by less than all of the Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portion of the Common Elements.

Section 9.4 Expense Allocation. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit(s) to which the Limited Common Element is assigned.

ARTICLE 10. EASEMENTS

Section 10.1 Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements as shown on any recorded Plat and Map of the Real Estate, or any portion thereof. Further, the Real Estate, or portions thereof, is now or may hereafter be subject to the easements, licenses and other recorded documents, or any of them, set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 10.2 Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit or in the event that any portion of a Unit encroaches upon any other Unit or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of a Building; (ii) alteration or repair to the Common Elements and any improvements thereon; or (iii) repair or restoration of one (1) or more Buildings and/or Unit(s) after damage by fire or other casualty, or condemnation or eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. Without limiting the generality of the foregoing, there shall be an easement upon any other Unit or upon any portion of the Common Elements for the placement and maintenance of utility meters and related items. In the event that any one (1) or more of the Units, Buildings or other improvements comprising part of the Common Elements, are partially or totally destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then

exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other Security Interests relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Plat and Map.

Section 10.3 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 all streets and upon the Common Elements in the proper performance of their duties.

Section 10.4 Access and Utility Easements. There is hereby created a blanket easement upon, across, over and under the Common Elements for ingress and egress to and front each Unit and for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity and master television antenna or cable systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Elements and to affix, repair and maintain water and sewer pipes, water and sewage pumps, gas, electric, telephone and television wires, cables, circuits, conduits and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Association shall have the right and authority to grant such easements upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof. The easement provided for in this Section 10.4 shall in no way affect, avoid, extinguish or modify any other recorded easements on the Common Elements.

Section 10.5 Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements, maintenance and storage facilities for use by the Association.

Section 10.6 Drainage Easement. An easement is hereby granted to the Master Association and the Association, their officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Common Elements for the purpose of changing, correcting or otherwise modifying the grade or drainage channels of the Real Estate so as to improve the drainage of water on the Real Estate. Every Unit and the Common Elements shall be burdened with easements for natural drainage of storm water runoff from the other portions of the Real Estate; provided, no person shall alter the natural drainage on any Unit so as to materially increase the drainage of water onto adjacent portions of the Real Estate without the consent of the Owner of the affected property.

Section 10.7 Easements of Access for Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within individual Units or may be conveniently accessible only through individual Units. The Owners of other individual Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each individual 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 located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Elements or to any individual

Unit. The Association shall also have such right, independent of any agency relationship. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any individual Unit at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after reasonable notice under the circumstances to the occupants of the individual Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected individual Unit shall be warned of impending entry as early as is reasonably possible.

Section 10.8 Easements Deemed Created. All conveyances of Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 10, even though no specific reference to such easements or to this Article 10 appears in the instrument for such conveyance.

ARTICLE 11. RESTRICTIVE COVENANTS AND OBLIGATIONS

Section 11.1 Land Use. No building or other structure shall be erected, altered, placed, or permitted to remain within the Real Estate other than those approved by the Architectural Control Committee of the Master Association (the "ARC"), and such additional improvements as may be approved by the ARC. Except for those improvements erected or installed by Declarant in its construction and completion of the Common Interest Community, which have already been approved by the ARC, no exterior additions to, alterations or decoration of any Building, including, but not limited to, any structural alterations to any Unit or Common Element, nor any changes in fences, hedges, walls or other structures, nor installation of window-mounted air conditioning units or any exterior television, radio or other communication antennas of any type, shall be commenced, erected, placed or maintained, without the prior written Approval of the Executive Board of the Association and the ARC of the Master Association.

Section 11.2 Trash Collection. The Master Association, acting through its Board of Directors (the "Board"), shall have the right to require that any trash collection within the Common Interest Community be performed by one company and that trash be collected from all Units by such company on the same day of each week. The Master Board shall select the trash company based on competitive bids. At the option of the Master Association, the cost of trash collection shall be paid by each Owner directly to the trash collection company, and in such event, the Master Association shall have no duty to assess the cost of trash collection as a Common Expense. Nothing herein contained shall be construed to prohibit an Owner from personally disposing of trash from his Unit. This Section shall not apply to a contractor during the construction of a Residence or other improvements on a Lot. The contractor may dispose of trash, rubbish, debris, and other construction materials from the Lot either personally or by contracting with a trash collection company. The trash collection company may remove trash, rubbish, debris, and other construction materials from the Lot during the construction of the Residence as often as the contractor deems appropriate. Except during the construction or remodeling of a Residence or other improvements on a Lot and except on the day designated for trash collection, all trash receptacles shall be kept in a garage, outbuilding, or screened from view by screening approved by the ARC.

Section 11.3 No Hazardous Activities. No activities shall be conducted within the Common Interest Community which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no open fires shall be lighted or permitted except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 11.4 Vehicle Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any vehicles, trailers, or boats, may be performed within the Real Estate unless it is done within a completely enclosed garage which screens the sight and sound of the activity from the street and from adjoining Lots, nor shall any such activity be performed on the Common Elements. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle together with those activities normally incident and necessary to such washing and polishing.

Section 11.5 Signs. No sign of any character shall be displayed or placed upon the Real Estate or any improvements thereon, with the following exceptions:

11.5.1 One (1) sign per Unit of not more than six (6) square feet in total area advertising a Unit for sale shall be permitted.

11.5.2 The Declarant or the Association shall have the right to place a permanent sign at each entrance to the Common Interest Community identifying the Common Interest Community.

11.5.3 Until such time as the Declarant is no longer the Owner of a Unit, the Declarant or its agents shall have the right to place one or more signs on the Common Interest Community, without limitation of size, offering Units within the Common Interest Community for sale.

11.5.4 Additional signs may be permitted if approved by the Board.

11.5.5 The display of the American flag, service flags, and political signs in conformance with C.R.S. §38-33.3-106.5 shall be permissible.

Section 11.6 Antennae. No antennae or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used, or maintained outdoors on any Lot, whether attached to a Building or structure or otherwise, unless approved by the Board. Antennae may be located in the attic space. Satellite dishes over one (1) meter are not allowed; no satellite dishes on front elevations will be permitted.

Section 11.7 Subdivision. There shall be no subdivision of a Unit into two or more Units after a Map including such Unit has been approved and filed with the appropriate governmental authority, or changing the boundary lines of any Unit, except that the Declarant shall be permitted to subdivide or change boundary lines of Units which it owns.

Section 11.8 Occupancy of Residence. In addition to any other restrictions imposed upon Unit Owners by any Law of any Governmental Authority, with regard to the completion of a Unit and notwithstanding the issuance of a temporary or permanent certificate of occupancy for the Unit by the appropriate Governmental Authority, no Unit shall be occupied until all buildings, fences, walls, structures, and other improvements as set forth in the plans and specifications submitted to and approved by the ARC shall first

be constructed and installed, including, but not limited to, the rough grading of the Lot and the installation of driveways and sidewalks thereon.

Section 11.9 Home Occupations. The conduct of a home occupation within a Unit shall be considered accessory to the residential use and shall not be deemed a violation of this Declaration, provided that the following requirements are met:

11.9.1 Such home occupation shall be conducted only within the interior of the Unit and shall not occupy more than twenty-five percent (25%) of the floor area within the Unit;

11.9.2 The home occupation shall be conducted only by residents of the Unit;

11.9.3 Only those home occupations which require no visits from customers and no parking at or near the Unit in connection with such occupation shall be allowed, unless such parking is incorporated into and constructed as part of the overall home site plan;

11.9.4 There shall be no evidence of a home occupation visible from the outside of the Unit; and

11.9.5 The conduct of such home occupation must be permitted under the zoning ordinances of the City of Fort Collins.

Section 11.10 Storage Tanks and Containers. No elevated tanks of any kind shall be erected, placed, or permitted to remain within the Real Estate unless such tanks are screened from view from other Lots and from the streets by fencing or landscaping in a manner approved by the ARC. All air-conditioning, refrigeration, cooling, heating, or other mechanical equipment or system which is located outside of a Unit, including but not limited to, window air-conditioning units and swamp coolers, shall be screened from view from other Lots and from the streets by fencing or landscaping approved by the ARC.

Section 11.11 Restrictions on Leasing. No Unit Owner shall lease his or her Unit in violation of City Zoning or Ordinances. All such leases shall be in writing and shall provide that the tenant shall comply in all respects with the provisions of the Master Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Master Association, this Declaration and the Documents, and that any failure by the tenant to comply with the terms and provisions of the Documents shall be a default under the lease. The Board may require information forms to be completed and security deposits to be made by tenants. A copy of any lease shall be provided upon request to the Board, which may require the use of its approved lease form or the insertion of particular provisions. After notice and an opportunity for hearing, the Board may require an Owner to evict any tenant who has violated any provision of the Master Declaration, the Articles of incorporation, Bylaws, or Rules and Regulations of the Master Association, or this Declaration and the Documents. Notwithstanding the foregoing, Eligible First Mortgagees and Eligible Insurers shall be exempt from any leasing restrictions placed on the Units.

Section 11.12 Insurance. Nothing shall be done or kept within any Unit which would increase the premiums for insurance or result in the cancellation of any insurance maintained by the Association.

Section 11.13 Discharge of Weapons. No Person shall discharge, fire, or shoot any gun, pistol, rifle, shotgun, crossbow, bow and arrow, slingshot, spud-gun, paint gun, BB gun, pellet gun, stun gun, or other firearm or weapon of any kind. Notwithstanding the foregoing, the discharge of firearms or weapons by

any member of any law enforcement agency in the course of such member's official duty shall not be deemed a violation of this provision.

Section 11.14 Mineral Extraction. No mining or extraction of oil, gas, gravel, or other minerals shall be permitted on the Real Estate.

Section 11.15 Resubdivision. No Lot may be further subdivided without the approval of the Board. This provision shall not be construed to prohibit or prevent the dedication or conveyance of any portion of a Lot as an easement for public utilities.

Section 11.16 Animals.

11.16.1 Definitions. For purposes of this Section 11.16, the following terms shall have the meanings given:

(a) "Animal" shall mean any live vertebrate creature, either domestic or wild, excluding fish.

(b) "At Large" shall mean outside of a fence or other enclosure which restrains the animal to a Lot, unless under the control by leash or lead of the keeper. Animals tethered to a stationary object within reach of a street, sidewalk, common element, or other common access point shall be considered "at large."

(c) "Keeper" shall mean a person who is the owner of an animal. Keeper shall also mean any person who has custodial or supervisory authority or control over an animal.

(d) "Leash" shall mean a cord, rope, chain, or similar device which holds an animal in restraint.

(e) "Pet" shall mean a dog or cat that has been bred and/or raised to live in or about the habitation of humans and is dependent upon humans for food and shelter.

(f) "Restraint" shall mean: (i) Secured by leash under the physical control of responsible person; (ii) tethered to a stationary object not within reach of a street, sidewalk, alley, common element, or other public access; or (iii) within a fenced or other enclosed area limiting the animal to a Lot.

(g) "Shelter" shall mean a structure or environment adequate to the species of pet animal which provides protection from adverse weather conditions.

11.16.2 Prohibition. No animals other than pet dogs or cats, or other household pets as such term may be defined and determined by the Board, may be kept within the Common Interest Community.

11.16.3 Commercial Purposes. No animal shall be boarded, kept, bred or maintained within the Common Interest Community for commercial purposes.

11.16.4 Number. No more than two (2) pet dogs; no more than two (2) pet cats; and no more than a total of three (3) adult pet dogs and/or adult pet cats may be kept within any Unit. (For example, two pet dogs and one pet cats; or two pet dogs and one pet cat; or two pet cats and one pet dog; or three pet cats.) Pet dogs and pet cats shall not be considered adults until they are six (6) months old.

11.16.5 Rabies Vaccinations. The Master Association shall have the right, but not the obligation, to require that the Owners of all pet dogs and pet cats, provide to the Board evidence of current vaccination against rabies.

11.16.6 Improper Care or Treatment. No Owner or keeper of an animal shall fail to provide that animal with sufficient good and wholesome food and water, proper shelter, protection from the weather, veterinary care, and such other care as is customary and necessary for the animal's health and well-being, considering the species, breed, and type of animal. No person shall beat, cruelly ill-treat, torment, overload, overwork, otherwise abuse, or needlessly kill an animal, or cause, instigate, or permit any fight among animals. No person shall transport or confine an animal in or upon any vehicle in a cruel and reckless manner. No owner of an animal shall abandon such animal.

11.16.7 Removal of Waste. The Owner or keeper of any animal shall be responsible for the immediate removal of any feces deposited by such animal on any Lot or Common Element, and shall be subject to a fine imposed by the Association for a violation hereof.

11.16.8 Animals at Large. All animals within the Common Interest Community shall be kept under restraint. No Owner or keeper of an animal shall permit such animal to be at large within the Common Interest Community.

11.16.9 Disturbance of Peace. No Owner or keeper of an animal shall permit such animal to disturb the peace and quiet of any Person within the Common Interest Community by barking, whining, howling, yowling, squawking, or making any other noise in an excessive, continuous, or untimely fashion.

11.16.10 Nuisance. The Owner or keeper of an animal shall exercise proper care and control of his or her animal to prevent it from becoming a public nuisance. For purposes of this Section, a public nuisance includes an animal which is a safety or health hazard, damages or destroys the property of another, or creates offensive odors which materially interfere with or disrupt another person in the conduct of activities within such other person's Unit.

11.16.11 Vicious Animals. No Person shall own or keep any vicious animal within the Common Interest Community. A vicious animal is one that has bitten or clawed any Person or in a vicious or terrorizing manner, approaches any Person in an apparent attitude of attack whether or not the attack is consummated or is capable of being consummated. For purposes of this Section, it shall be a defense to a charge of owning or keeping a vicious animal that the Person or animal bitten or approached by the vicious animal was:

- (a) Attacking the animal or engaging in conduct reasonably calculated to provoke the animal to attack or bite;
- (b) unlawfully engaging in entry into or upon a fenced or enclosed portion of the Unit upon which the animal was kept or properly restrained;
- (c) unlawfully engaging in entry into or upon a vehicle in which the animal was confined;
- (d) attempting to assault the animal or another Person;
- (e) attempting to stop a fight between the animal and any other animal;
- (f) attempting to aid the animal when it was injured;

(g) attempting to capture the animal in the absence of the Owner or keeper;

(h) the animal was acting in self-defense, defense of its offspring, or defense of its Owner or keeper.

Section 11.17 Use of Common Elements. All use of the Common Elements shall be subject to the terms and provisions of the Rules and Regulations adopted by the Board of the Master Association, and the Rules and Regulations adopted by the Executive Board of the Association. No damage or waste shall be committed to the Common Elements by Owners, their families, tenants, guests, and invitees. Subject to the Special Declarant Rights as provided in this Declaration, there shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written Approval of the Executive Board of the Association. Except for those improvements erected or installed by Declarant in its construction and completion of the Common Interest Community, nothing shall be altered on, constructed in or removed from the Common Elements without the prior written Approval of the Executive Board of the Association.

Section 11.18 Motor Vehicles on Common Elements. No motor-driven, engine-powered, or other mechanically propelled vehicle, including, by example and not limitation, automobiles, trucks, motorcycles, all-terrain vehicles, and snowmobiles, may be used or operated within or upon any of the Common Elements, except for Common Elements designed for such purposes, and except in the event of an emergency or by the Master Association or the Association for maintenance purposes.

Section 11.19 General Prohibition. No use shall be made of an Owner's Unit which will in any manner violate any Law of any Governmental Authority having jurisdiction over the use of said Owner's Unit. Any violation of any Law shall also be a violation of this Declaration and the Master Declaration.

Section 11.20 Maintenance of Lots and Improvements. The Association, as referenced in Article 14 below, shall keep or cause to be kept all Common Elements within the Common Interest Community, in good repair. Rubbish, refuse, garbage, and other solid, semisolid, and liquid waste shall be kept within sealed containers, shall not be allowed to accumulate within the Common Elements, and shall be disposed of in a sanitary manner. No Common Elements shall be used or maintained as a dumping ground for such materials. All containers shall be kept in a neat, clean, and sanitary condition and shall be stored inside a Unit or other approved structure. No trash, liner, or junk shall be permitted to remain exposed upon any Common Elements and visible from adjacent streets or other Lots. Burning of trash within the Common Interest Community shall be prohibited. No lumber or other building materials shall be stored or permitted to remain on the Common Elements unless screened from view from other Lots and from the streets, except for reasonable storage during construction.

Section 11.21 Nuisance. Nothing shall be done or permitted within the Common Interest Community which is or may become a nuisance. No obnoxious or offensive activities or commercial businesses or trades shall be conducted within the Common Interest Community. As used herein, the term "nuisance" shall not include any activities of Declarant in regard to the development and construction of the Common Interest Community.

Section 11.22 Temporary Structures. No structure of a temporary character, including, by example and not limitation, trailers, converted trailers, shacks, sheds, tents, garages, of accessory buildings, shall be used within the Common Interest Community as a Residence, temporarily or permanently.

Section 11.23 Construction Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant, its agents, employees, and contractors to maintain during the period of construction and sale of any Units, upon such portion of the Real Estate as Declarant may choose, such facilities as in its sole opinion may be reasonably required, convenient or incidental to the construction and sale or rental of Units, including, without limitation, a business office, storage area, construction yard, signs, model Units, sales office, construction office, parking areas, and lighting.

Section 11.24 Storage of Vehicles. Boats, campers, snowmobiles, all-terrain vehicles, trailers, machines, tractors, semi-tractors, tractor trailers, trucks (except standard pickup trucks), inoperative automobiles and vehicles owned by any Person who is not a Resident of the Common Interest Community shall not be stored, parked, or permitted to remain on any street, Lot, or Common Element, except within fully-screened from neighbor view, for more than: (a) 12 consecutive hours; (b) a total of 24 hours within any 5 consecutive days; or (c) a total of 120 hours during any 30 consecutive days.

11.24.1 Notwithstanding the foregoing parking restrictions, and in conformance with C.R.S. §38-33.3-106.5(1)(d), the parking of a motor vehicle by an Owner on a street, driveway, or guest parking area in the Common Interest Community shall be permitted if the vehicle is required to be available at designated periods at the Owner's residence as a condition of the Owner's employment and all of the following criteria are met:

- (a) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;
- (b) The Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider, as defined in C.R.S. §29-11-101(1.6);
- (c) The vehicle bears an official emblem or other visible designation of the emergency service provider; and
- (d) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Owners to use streets and driveways within the Common Interest Community.

Section 11.25 Towing or Booting. If any vehicle is parked on any portion of the Common Interest Community in violation of the foregoing Sections or in violation of the Association's Rules and Regulations, the Executive Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a Person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

11.25.1 If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Unit, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

11.25.2 If a vehicle is towed or booted in accordance with this Section 11.26, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to

tow or boot is in addition to, and not in limitation of, all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Executive Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 11.26 Damage or Destruction of Improvements. Subject to the provisions of Article 13 below, in the event any Unit or other structure constructed within the Common Interest Community is damaged, either in whole or in part, by fire or other casualty, said Unit or other structure shall be promptly rebuilt or remodeled to comply with this Declaration and the Master Declaration; or in the alternative, if the Unit or other structure is not to be rebuilt, all remaining portions of the damaged structure, including the foundation and all debris, shall be promptly removed from the Lot, and the Lot shall be restored to its natural condition existing prior to the construction of the Unit or other structure.

Section 11.27 Disturbing the Peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, disorderly, or obstreperous conduct, and no Owner shall knowingly permit such conduct within such Owner's Unit or upon any Common Elements.

Section 11.28 Unit Maintenance. Each Owner shall keep such Owner's Unit and improvements in a safe, clean, and neat condition; shall remove, replace, or restore all such items not in such condition; and shall comply in all respects with all government, safety, health and police requirements.

Section 11.29 Rules and Regulations. The Association, through the Executive Board, may adopt reasonable Rules and Regulations not inconsistent with this Declaration governing the use of the Common Elements. The Master Association likewise has the power to adopt and enforce rules and regulations as provided in the Master Declaration.

Section 11.30 Master Declaration. The Common Interest Community, Units, and Owners are also subject to the restrictive covenants and obligations as provided in the Master Declaration.

Section 11.31 Exemption for Declarant. Provisions of this Declaration regarding development rights, special declarant rights and additional reserved rights shall supersede the provisions in this Article 11. The Declarant and transferee declarants shall be exempt from provisions of this Article 11 which impede or preclude the exercise of any development right, special declarant right, or additional reserved rights reserved to the Declarant and transferee declarants pursuant to this Declaration.

ARTICLE 12. INSURANCE

Section 12.1 Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements set forth in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any mortgage Insurer with respect to their guaranty, insurance or purchase of Security Interests.

12.1.1 Property insurance for broad form covered causes of loss, including Units as they were originally conveyed by the Declarant to the original purchasers; except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, excavations and other matters normally excluded from property policies. Any changes or upgrades to the interior surfaces of the base model Unit as conveyed by the Declarant to original purchasers must be separately insured by the Owners.

12.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Executive Board, the Association, any managing agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Executive Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one (1) or more insured parties against other insured parties.

12.1.3 A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Common Interest Community, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months' aggregate assessments on the Units, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Common Interest Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this Subsection 12.1.3.

12.1.4 In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate from time to time, to the extent that such coverage is reasonably available, including, but not limited to, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association, and coverage on fixtures, equipment and other personal property inside Units.

Section 12.2 General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, and the Association or its designee as trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any Owner's membership in the Association. The policy or policies shall contain a standard noncontributory Security Interest holder's clause in favor of each Security Interest holder and a provision that it cannot be canceled or materially altered by either the insured or the insurance company until at least thirty (30) days' prior written notice thereof is given to

the insured and each Security Interest holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest holders, upon request. All policies of insurance carried by the Association shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

Section 12.3 Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

12.3.1 To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

12.3.2 Any loss to any Unit or to any Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Executive Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

Section 12.4 Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 12.1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Security Interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, the Owners and Eligible Mortgagees as their interests may appear. Subject to the provisions of Section 12.1 of this Article, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, the Owners and the Eligible Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

Section 12.5 Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

Section 12.6 Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws or policy, contributions or assessments may be made against the mortgagor or Mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

Section 12.7 Insurance to be Maintained by Owners. Any insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on a Unit, the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each individual Unit, shall be the responsibility of the Owner of such Unit. This shall include a loss assessment to cover the deductible. Each Owner needs to have at minimum of \$15,000 in a loss assessment coverage, and to ensure their carrier does not have an alternate amount if the loss is related to the Association deductible.

Section 12.8 Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance.

Section 12.9 Notice of Cancellation. If the insurance described in Section 12.1 of this Article is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE 13. DAMAGE OR DESTRUCTION

Section 13.1 Damage or Destruction.

13.1.1 Any portion of the Common Interest Community which is covered by a policy of insurance carried by the Association and which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) the Common Interest Community is terminated;
- (b) repair or replacement would be illegal under my state or local statute or ordinance governing health or safety; or
- (c) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild.

13.1.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a

condition compatible with the remainder of the Common Interest Community, and except to the extent that other persons will be distributees, the insurance proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units or to the holders of a Security Interest, as their interests may appear, and the remainder of the proceeds must be distributed to all the Owners or the holders of a Security Interest, as their interests may appear, in proportion to the Allocated Interests of all the Units. Repair or replacement shall mean the restoration of improvement(s) to substantially the same condition in which they existed prior to the damage in conformance with the original architectural plan and scheme. If the Owners vote not to rebuild any Unit, that Unit's Allocated Interest is automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations.

Section 13.2 Use or Distribution of Insurance Proceeds. In the event of damage or destruction to all or a portion of the Common Elements, due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed area, the Association shall levy a special assessment in the aggregate amount of such insufficiency pursuant to Section 8.7 hereof.

ARTICLE 14. MAINTENANCE, REPAIR AND RECONSTRUCTION OF COMMON ELEMENTS

Section 14.1 Maintenance of the Common Elements.

14.1.1 The maintenance, repair, reconstruction and operation of the Common Elements shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. The Association shall conduct reasonable safety inspections of the Common Elements, and shall conduct immediate follow-up maintenance to correct unsafe conditions. The Association shall receive and process complaints of its members regarding safety issues. The Association shall not need the prior approval of its members to cause such maintenance, repairs, reconstruction and operation to be accomplished. While assessed differently as elsewhere provided in this Declaration, and except as otherwise provided herein, the Association shall maintain and keep in repair both the general Common Elements and the Limited Common Elements.

14.1.2 Maintenance, repair, or replacement of any drainage structure or facilities, public streets, or other public improvements required by the local governmental entity as a condition of development of the Common Interest Community or any part thereof shall be the responsibility of the Association, unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair, or replacement or unless such maintenance, repair, or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity.

14.1.3 Without limiting the generality of Section 14.1.1 above, the removal of snow from the Common Elements, including, but not limited to, sidewalks, parking lots, and driveways, shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. Notwithstanding anything to the contrary in this Declaration, all Units shall be assessed equally for snow removal.

14.1.4 Without limiting the generality of Section 14.1.1 above, the irrigation and maintenance of all landscaping within the Common Interest Community shall be the responsibility and expense of the Association and a Common Expense of all of the Owners. Notwithstanding anything to the contrary in this Declaration, all Units shall be assessed equally for irrigation and maintenance of all landscaping within the Common Interest Community.

14.1.5 The Association, subject to the requirements of the Master Association, shall contract with a trash removal service for the removal of all trash within the Common Interest Community, and the Owners shall be obligated to use the trash removal service selected by the Association. Such trash removal shall be the responsibility and expense of the Association and a Common Expense of all of the Owners, unless billed directly to the Unit Owners at the instruction of the Master Association.

14.1.6 The Association shall collect as assessments, and expend, funds for the cost of the maintenance, repair and replacement to be performed by the Association under this Section, subject to Section 14.4 of this Article.

14.1.7 Notwithstanding anything to the contrary contained in this Declaration, none of the responsibilities of the Association for management, control, maintenance, repair, replacement and improvement of the Common Elements or improvements thereon shall give rise to any interest of the Association in any Unit or the quality of any improvements therein or thereon, nor any right by the Association to pursue any claims against the Declarant, any member thereof, or any other Person, for negligence, breach of express or implied warranties, or any other matters, with respect to any such improvements or the construction thereof.

Section 14.2 Association's Right to repair, maintain, restore and Demolish. Each Owner shall keep such Owner's Unit and improvements well maintained, in a safe, clean, and neat condition. In the event any Owner shall fail to perform his maintenance, repair and replacement obligations in a manner satisfactory to the Executive Board, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Executive Board, enter upon said Unit subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or replacement. The cost of such maintenance, repair and replacement shall be the personal obligation of the Owner of the Unit on which such work is performed, and shall be subject to all of the terms and provisions applicable to "assessments" as provided in Article 8 hereof, including, without limitation, interest, late charges and lien rights.

Section 14.3 Easement for Maintenance Access and Entry. Each Owner shall afford to the Association and the other Owners, and to their agents, access through such Owner's Unit reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or improvements maintained, repaired or replaced by the Association. If damage is inflicted or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Unit, the Owner responsible for the damage or the expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair or avoidance. Further, each Unit shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Unit, except that in emergency situations entry upon a Unit may be made at any time provided that the Owner or occupants of each affected Unit shall be warned of impending emergency entry as early as is reasonably possible.

Section 14.4 Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any other property, a Unit, or any improvements located thereon, is caused by the willful or negligent act or omission of any Owner, any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or the expense to avoid such damage shall be the personal obligation of such Owner to the extent that said Owner would be liable for the acts of such persons under the laws of the State of Colorado; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Unit is subject and shall be subject to all of the terms and provisions of Article 8 of this Declaration. A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing conducted by the Executive Board after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this section may be appealed by said Owner to a court of law.

Section 14.5 Construction Defects. The Association shall not commence any lawsuit, arbitration or other civil action against the Declarant for construction defects, omissions or errors without first:

14.5.1 Notifying the Declarant in writing of the nature of the claim stating the specific location and description of each claimed defect, omission or error. Failure of the Association to so notify Declarant within thirty (30) days of its first discovery of the claim shall be deemed a waiver of any right to assert said claim, or any other claim for the same defect, error or omission in another location on the property.

14.5.2 Allowing Declarant ninety (90) days to assess the alleged defect, omission or error, and to commence repairs if necessary, which repairs shall be pursued diligently to conclusion. Prior to commencing repairs, Declarant shall provide to the Executive Board of the Association Declarant's plan of action which shall include the scope, general procedures, inspection procedures, and, if Declarant deems necessary, plans, specifications and shop drawings. In the event Declarant denies liability for the alleged defect, omission or error, or the Executive Board objects to Declarant's remediation plan, the parties shall submit their dispute to binding arbitration as provided below. No claim for a defect, omission or error with respect to a Common Element or Limited Common Element may be asserted except by the Executive Board. As long as the Declarant acts in accordance with this Section 14.5, Declarant shall be deemed to have acted in good faith.

14.5.3 Obtaining the consent of at least sixty-seven percent (67%) of the Members of the Association. The question put to the Members shall disclose:

- (a) Whether the attorneys are to be engaged on a fixed fee, hourly rate or contingency basis, and what the hourly rate is for all attorneys and support personnel;
- (b) Estimated consultant requirements and fees;
- (c) Estimated total attorneys' fees, consultants' fees and other costs of litigation, both as a percentage of any possible award and as a fixed dollar amount;

(d) The estimated cost of repairs as determined by the signed bids of not less than three licensed contractors from a scope of work prepared by a licensed engineer or architect;

(e) The estimated dollar amount of the claim to be advanced and what the net amount to the Association would be after payment of legal fees and costs and whether that amount would be sufficient to make the claimed repairs;

(f) The potential damage and loss to the capital value of the Member's assets (Units) while the Units are tied up in litigation, and, specifically, the fact that the Units may not be marketable while involved in litigation.

Section 14.6 Arbitration. Any dispute between the Association and the Declarant shall be decided by binding arbitration. The arbitration shall be conducted in accordance with the Uniform Arbitration Act, C.R.S. §13-22-200 *et seq.* Judgment on the award of the arbitrator may be entered in any court having jurisdiction thereof. The party desiring arbitration shall serve written notice upon the other party, together with designation of the first party's representative. If the person designated by the first party is acceptable to the second party as an arbitrator, the second party shall notify the first party within ten (10) days and such representative shall serve as the sole arbitrator. If the person designated is not acceptable to the second party, then the second party shall designate his or its own representative in a written notice to the first party, then the second party shall designate his or its own representative in a written notice to the first party within the same ten (10) day period. The two representatives named, if such is the case, shall within ten (10) days thereafter appoint an arbitrator, and the arbitrator shall then proceed forthwith to hear and unilaterally determine the matter. If either party fails, within the time allowed herein, to appoint its representative, the representative named by the other party shall act as the sole arbitrator and unilaterally decide the matter. If the two representatives are unable to agree upon an arbitrator within the ten (10) days allowed herein, either party may at any time apply to the presiding judge of any court of competent jurisdiction in Larimer County for the appointment of an arbitrator, and the arbitrator shall proceed forthwith to hear and unilaterally determine the matter. Attorneys' fees and costs may be awarded at the discretion of the arbitrator, but are not mandatory. In no instance may punitive, multiple or other special damages be awarded.

Section 14.7 Award. In the extent of an award resulting from a lawsuit, arbitration or other civil action claiming defects, errors or omissions, the money derived therefrom must be used to make the repairs for which it was awarded. The work shall be performed by licensed and insured third party contractors under contract with the Association. In no event will funds be disbursed directly to Members for repairs or for any other reason, except for reimbursement for claims which were presented and proven, or stipulated, during the litigation, arbitration or settlement. In the event the award is insufficient to fully fund the repairs, the Executive Board shall determine the shortfall amount and shall either (a) borrow from a commercial lender sufficient funds to complete the work, which debt shall be guaranteed by all the Members individually, if required by the lender, and the repayment of which shall be included in the regular assessments or by Special Assessment, or (b) effect a Special Assessment on the Members to Fund the shortfall. Repairs shall be commenced within ninety (90) days of the receipt of any award and pursued diligently to completion.

Section 14.8 Waiver of Tort and Related Damages. The Association and the Members waive any claim or theory of recovery for tort damages against Declarant for defects, errors or omissions that have not caused any physical damage to person or property. Declarant's duty to repair a defect, omission or error

as outlined in Article 14. Section 14.5.2 hereof is the exclusive remedy which the Association shall have against Declarant for said defect, omission or error. The Association shall not have, and hereby waives, the right to pursue any other remedies or damages, including, but not limited to, consequential, punitive or other special damages against Declarant.

ARTICLE 15. MORTGAGEE PROTECTION

Section 15.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests and others as identified in Section 15.2 hereof. This Article is supplemental to, and not in substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control. As used in this Article, and elsewhere in this Declaration, the terms "Eligible First Mortgagees" and "Eligible Insurers" shall mean mortgagees and insurers who have provided written notice to the Association of their name and address, and have identified the Unit in which they hold a firm security interest or have insured or guaranteed a first security interest.

Section 15.2 Percentage of Eligible First Mortgagees. Various provisions in this Declaration prohibit certain designated actions without the approval or consent of a specified percentage of Eligible First Mortgagees. The percentage of Eligible First Mortgagees who have given any such approval or consent shall be deemed to be equal to 100 multiplied by (a) the number of votes in the Association allocated to Units in which Eligible First Mortgagees having given such approval or consent hold Security Interests, divided by (b) the total number of votes in the Association allocated to all Units that are subject at the time to Security Interests held by Eligible First Mortgagees. If no other percentage is specified, approval or consent by 67% of Eligible First Mortgagees shall be deemed to be required.

Section 15.3 Notice of Actions. If requested in writing to do so, the Association shall give prompt written notice of the following to each Eligible First Mortgagee making such request.

15.3.1 any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the Eligible First Mortgagee;

15.3.2 any delinquency in the payment of assessments which remains uncured for sixty (60) days by an Owner whose Unit is encumbered by a Security Interest held by such Eligible First Mortgagee;

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

15.3.4 any proposed action which should require the consent of Eligible First Mortgagees as set forth in this Article; and

15.3.5 any judgment rendered against the Association that is not covered (subject to reasonable deductible or retention limits) by insurance.

Section 15.4 Consent by 67% Required. The Association may not take any of the following actions without the consent of 67% of the First Mortgagees:

15.4.1 conveyance or encumbrance of the Common Elements, provided that the granting of easements for public utilities, for construction and maintenance of roads within the Common Interest

Community, or for other purposes permitted by this Declaration will not be deemed a conveyance or encumbrance within the meaning of this clause;

15.4.2 restoration or repair of the Common Interest Community (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

15.4.3 termination of this Declaration for reasons other than substantial destruction or condemnation, subject to the approval percentages required for such termination;

15.4.4 merger of the Common Interest Community with any other common interest community;

15.4.5 any decision not to repair or replace the Common Elements except as permitted in this Declaration; or

15.4.6 except as provided by the Act, in the case of condemnation or loss of substantially all of the Units and/or Common Elements of the Common Interest Community,

(a) by act or omission seek to abandon or terminate the Common Interest Community

(b) change the pro rata interest or obligations of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Unit in the Common Elements;

(c) partition or subdivide any Unit;

(d) seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission, provided that the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Common Interest Community is not a transfer within the meaning of this clause; or

(e) use hazard insurance proceeds for losses to any of the Common Interest Community (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Common Interest Community.

Section 15.5 Consent by 51% Required. Except as otherwise required by the Act, provisions in this Declaration relating to the following subjects may not, without the consent of 51% of the Eligible First Mortgagees, be materially amended or modified:

15.5.1 voting;

15.5.2 assessments, assessment liens or subordination of such liens;

15.5.3 reserves for maintenance, repair and replacement of Common Elements;

15.5.4 insurance or fidelity bonds;

15.5.5 rights to use the Common Elements;

15.5.6 responsibility for maintenance and repair of the several portions of the Common Interest Community;

15.5.7 expansion or contraction of the Common Interest Community, or addition or annexation of property to or withdrawal of property from the Common Interest Community;

15.5.8 definition of the boundaries of any Unit;

15.5.9 the interests of any Person in the Common Elements;

15.5.10 convertibility of Units into Common Elements or of Common Elements into Units;

15.5.11 leasing of Units;

15.5.12 any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey such Owner's Unit;

15.5.13 self-management by the Association or professional management of the Association; or

15.5.14 protection of the interests of Eligible First Mortgagees.

Section 15.6 Approval. The failure of an Eligible First Mortgagee or Eligible Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, "return receipt requested" for Approval of an addition or amendment of the Documents wherever Eligible First Mortgagee or Eligible Insurer Approval is required, shall constitute an Approval of the addition or amendment.

Section 15.7 Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

Section 15.8 Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records and financial statement. The Association shall permit any Unit Owner, Eligible First Mortgagee or Eligible Insurer or other first mortgagee of Units, to inspect the books and records of the Association during normal business hours, and shall provide copies upon payment of a reasonable fee.

Section 15.9 Financial Statements. The Association shall provide any Eligible First Mortgagee or Eligible Insurer who submits a written request, a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited or shall be reviewed by an independent certified public accountant if an Eligible First Mortgagee or Eligible Insurer requests it, in which case the Eligible First Mortgagee or Eligible Insurer shall bear the costs of the audit or review.

Section 15.10 HUD or VA Approval. During the period of Declarant control, the following actions shall require the prior approval of HUD or VA, if at any time such action is taken, HUD has insurance or VA has a Guarantee(s) on one (1) or more First Security Interests: annexation of additional real property, amendment of this Declaration, termination of the Common Interest Community, merger or consolidation of the Association.

Section 15.11 Enforcement. The provisions of this Article are for the benefit of Eligible First Mortgagees and Eligible Insurers and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 15.12 Attendance at Meetings. Any representative of an Eligible Fire Mortgagee or Eligible Insurer may attend and address any meeting which a Unit Owner may attend.

ARTICLE 16. GENERAL PROVISIONS

Section 16.1 Eminent Domain. The taking by eminent domain of Unit(s) or Common Element(s), or any portion thereof, shall be done in accordance with applicable law, including, without limitation, the Act.

Section 16.2 Enforcement.

16.2.1 Every Owner and occupant of a Unit shall comply with the Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

16.2.2 The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Documents. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Unit;

(b) suspending the right to vote (save and except that such suspension for a violation of the Association's Rules and Regulations shall not exceed sixty (60) days for any one occurrence);

(c) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Unit and the Owner as an assessment) or faking action to abate any violation of the Documents;

(d) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Unit in violation of the Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Executive Board or its designee shall have the right to enter the Unit, remove the violation and restore the Unit to substantially the same condition as it previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an assessment under the terms of this Declaration;

(e) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of any Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Common Interest Community;

(f) levying specific assessments to cover costs incurred by the Association to bring a Unit into compliance with the Documents; and

(g) bringing suit at law or in equity to enjoin any violation or to recover monetary damages.

16.2.3 In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Documents, the Association may record a notice of violation against the Owner and the Unit.

16.2.4 All remedies set forth in the Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Documents, the prevailing party shall recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

16.2.5 The decision of the Association to pursue enforcement action in any particular case shall be left to the Executive Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Executive Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. Without limiting the generality of the foregoing, the Executive Board may determine that, under the circumstances of a particular case:

- (a) the Association's legal position is not strong enough to justify taking any or further action;
- (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- (c) that it is not in the Association's best interest, based upon hardship, expense, limited effect on other Members or other reasonable criteria, to pursue enforcement action.

Section 16.3 Construction. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any Person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications. If there is a conflict between this Declaration and the Master Declaration, the more restrictive provision shall control unless that would result in a direct violation of the Master Declaration, in which case the Master Declaration shall control. The fact that this Declaration contains provisions which are different from or in addition to the provisions of the Master Declaration shall not, by itself, be deemed to be a conflict and, wherever possible, both documents shall be given full force and effect.

Section 16.4 Duration. This Declaration shall run with the land, shall be binding upon all Persons owning Units and any Persons hereafter acquiring said Units, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 16.5 Amendment. Except as otherwise provided (i) in this Declaration; (ii) in cases where the Declaration may be amended by the Declarant, or (iii) in cases where the Association or Unit Owners may amend this Declaration as provided in the Act and except as limited by C.R.S. §38-33.3-217(4) of the Act, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Owners holding at least 67% of the eligible Association vote and 51% of Eligible First Mortgagees. Any such amendments shall be certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Larimer County, State of Colorado, of a certificate sending forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 16.6 Headings. The headings in this Declaration are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Declaration or any provision hereof.


IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

Actarus, LLC

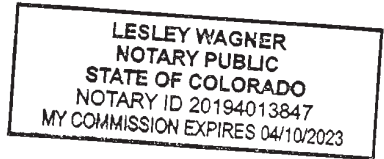
By: 
Christophe Attard
Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 8 day of September 2020, by Christophe Attard, as Manager of Actarus LLC, declarant for the Association.

Witness my hand and official seal. 

My commission expires: 4/10/2023



Notary Public

RATIFICATION

The undersigned, having a security interest in all or any part of the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms and consents to the foregoing SUBASSOCIATION CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH.

IN WITNESS WHEREOF the undersigned has caused its name to be hereunto subscribed by Justin Fitzpatrick on the 8th of September 2020.



Justin Fitzpatrick


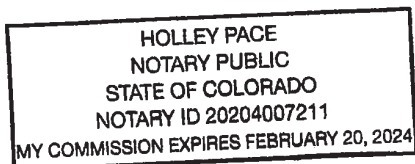
STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this 8th day of September 2020, by Justin Fitzpatrick.

Witness my hand and official seal.

My commission expires:

02-20-2024


Notary Public

**EXHIBIT "A" ATTACHED TO AND MADE A PART OF THE SUB-ASSOCIATION
CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH**

Legal Description of Real Estate:

LOT 2, BLOCK 1, NORTH FLATS, FTC (20070025560)

City of Fort Collins, County of Larimer, State of Colorado

Also known as 903 Blondel St, Fort Collins, CO 80524

**EXHIBIT "B" ATTACHED TO AND MADE A PART OF THE SUB-ASSOCIATION
CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH**

Allocated Interests

Building No.	Unit No.	Share of Common Elements	Share of Common Expenses	Vote in the affairs of the Association
903	101	1 out of 5	1 out of 5	1
903	102	1 out of 5	1 out of 5	1
903	103	1 out of 5	1 out of 5	1
903	204	1 out of 5	1 out of 5	1
903	205	1 out of 5	1 out of 5	1
	TOTAL:	100%	100%	5

EXHIBIT "C" ATTACHED TO AND MADE A PART OF THE SUB-ASSOCIATION

CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH

Easements and Licenses

Easements and licenses appurtenant to the Common Interest Community are as follows:

1. Rights of others to that portion of the land lying within Lake Canal ditch together with such adjoining land as may be used or useful in connection with the use or maintenance of that ditch.
2. RIGHT OF WAY EASEMENT AS GRANTED IN INSTRUMENT RECORDED NOVEMBER 10, 1925, IN BOOK 530 AT PAGE **299**.
3. RIGHT OF WAY EASEMENT AS GRANTED IN INSTRUMENT RECORDED MARCH 13, 1926, IN BOOK 535 AT PAGE **388**.
4. TERMS, CONDITIONS AND PROVISIONS OF INSTRUMENTS RECORDED MARCH 24, 1926 IN BOOK 535 AT PAGE **493** AND JANUARY 21 1965 IN BOOK 1278 AT PAGE 34 AND AUGUST 28, 1980 IN BOOK 2065 AT PAGE **801** AND MARCH 14, 1985 AT RECEPTION NO. **85012048** AND JUNE 15, 1985 AT RECEPTION NO. **85028305** AND OCTOBER 6, 2005 AT RECEPTION NO. **2005084976**
5. RIGHT OF WAY EASEMENT AS GRANTED IN INSTRUMENT RECORDED MARCH 28, 1967, IN BOOK 1041 AT PAGE **215**.
6. TERMS, CONDITIONS AND PROVISIONS OF ORDER RECORDED JUNE 06, 1983 IN BOOK 2222 AT PAGE **2082**.
7. TERMS, CONDITIONS AND PROVISIONS OF DEED OF DEDICATION RECORDED JULY 29, 1994 AT RECEPTION NO. **94063868**.
8. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT RECORDED SEPTEMBER 18, 2003 AT RECEPTION NO. **20030120347**.
9. TERMS, CONDITIONS AND PROVISIONS OF DECLARATION RECORDED MARCH 29, 2004 AT RECEPTION NO. **2004028102**.
10. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF OLD TOWN NORTH RECORDED JUNE 11, 2004 UNDER RECEPTION NO. **20040056692**.
11. TERMS, CONDITIONS AND PROVISIONS OF CROSSING AGREEMENT RECORDED SEPTEMBER 22, 2004 AT RECEPTION NO. **2004092998**.
12. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION RECORDED APRIL 21, 2005 AT RECEPTION NO. **2005031735**.
13. RESTRICTIVE COVENANTS, WHICH DO NOT CONTAIN A FORFEITURE OR REVERTER CLAUSE, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN,

ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW, AS CONTAINED IN INSTRUMENT RECORDED SEPTEMBER 21, 2005, UNDER RECEPTION NO. **2005080157**, AND AS AMENDED IN INSTRUMENT RECORDED JUNE 26, 2006, UNDER RECEPTION NO. **2006047748**, AND AS AMENDED IN INSTRUMENT RECORDED DECEMBER 11, 2007, UNDER RECEPTION NO. **2007092807**.

14. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF NORTH FLATS SUBDIVISION RECORDED APRIL 05, 2007 UNDER RECEPTION NO. **20070025560**.

15. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED DECEMBER 21, 2011 AT RECEPTION NO. **20110080039**; AND OLD TOWN NORTH AMENDMENT AGREEMENT NO. 1 RECORDED DECEMBER 21, 2011 AT RECEPTION NO. **20110080040**; AND OLD TOWN NORTH AMENDMENT AGREEMENT NO. 2 RECORDED DECEMBER 21, 2011 AT RECEPTION NO. **20110080041** AND OLD TOWN NORTH AMENDMENT AGREEMENT NO. 3 RECORDED FEBRUARY 24, 2014 AT RECEPTION NO. **20140009145** AND AMENDMENT AGREEMENT NO. 4 TO THE JUNE 10, 2004, OLD TOWN NORTH DEVELOPMENT AGREEMENT RECORDED MARCH 28, 2017 AT RECEPTION NO. **20170019851**.

**EXHIBIT "D" ATTACHED TO AND MADE A PART OF THE SUB-ASSOCIATION
CONDOMINIUM DECLARATION FOR THE NORTH FLATS 2 CONDOMINIUMS AT OLD TOWN NORTH**

Legal Description of Expansion Properties

LOT 1, BLOCK 1, NORTH FLATS, FTC (20070025560)
City of Fort Collins, County of Larimer, State of Colorado
Also known as 909 Blondel St, Fort Collins, CO 80524

LOT 2, BLOCK 3, NORTH FLATS, FTC (20070025560)
City of Fort Collins, County of Larimer, State of Colorado
Also known as 902 Blondel St, Fort Collins, CO 80524

LOT 1, BLOCK 3, NORTH FLATS, FTC (20070025560)
City of Fort Collins, County of Larimer, State of Colorado
Also known as 908 Blondel St, Fort Collins, CO 80524