

# CONDOMINIUM DECLARATION

FOR

## AIRPARK 550 CONDOMINIUMS

THIS CONDOMINIUM DECLARATION is made this 20<sup>th</sup> day of December, 2016, by Airpark 550, LLC, a Colorado limited liability company ("Declarant").

### ARTICLE 1

#### CREATION OF COMMON INTEREST COMMUNITY

1.01: General Purposes. Declarant owns the real property interests legally described on Exhibit A attached hereto and by this reference incorporated herein (the "Property"). Declarant desires to create pursuant to the provisions of the Colorado Common Interest Ownership Act (Article 33.3 of Title 38 of Colorado Revised Statutes) as the same may be amended from time to time (the "Act") a "common interest community" (as such term is defined in the Act) on the Property. Declarant further desires to establish a means to ensure the proper use and appropriate development of the Property as a high quality, aesthetically pleasing and harmoniously designed project by means of mutually beneficial covenants, conditions and restrictions imposed on the Property for the benefit of Declarant and all future owners of any portion of the Property.

1.02: Declaration. To further the purposes expressed in Section 1.01 hereof, Declarant, for itself and its successors and assigns, hereby declares that the Property shall, at all times, be owned, held, used and occupied subject to the provisions of this instrument, the covenants, conditions and restrictions contained herein and all amendments and supplements hereto.

1.03: Names of the Common Interest Community and the Association. The name of the common interest community hereby created is Airpark 550 Condominiums. The name of the unit owners association organized to govern and administer the common

interest community hereby created is Airpark 550 Condominium Association, a Colorado nonprofit corporation (the "Association").

1.04: Location and Type of Common Interest Community. The common interest community hereby created is situated in Eagle County, Colorado. The common interest community hereby created is a "condominium" (as such term is defined in the Act) because portions of the Property are designated for separate ownership by individuals or entities and the remainder of the Property is designated for common ownership solely by the owners of the separate ownership portions.

## ARTICLE 2

In addition to the definitions set forth above or below, the following terms shall have the following meanings when used herein:

### CERTAIN DEFINITIONS

2.01: Articles. "Articles" shall mean the Articles of Incorporation of the Association.

2.02: Board of Directors. "Board of Directors" shall mean the governing body of the Association.

2.03: Budget: "Budget" shall mean the plan for each fiscal year of the Association for the payment of current Common Expenses, for the reservation of funds for the payment of future Common Expenses and for obtaining the funds required for such payments to be adopted by the Association in accordance with the provisions of Section 8.01 hereof.

2.04: Building. "Building" shall mean the structure located on the Property containing the Units.

2.05: Bylaws. "Bylaws" shall mean the bylaws of the Association in effect from time to time.

2.06: *{Intentionally Omitted}*.

2.07: Common Elements. "Common Elements" shall mean: (a) the real property interests which at any time are subject to the Declaration and (b) all portions of the Project other than the Units.

2.08: Common Expenses. "Common Expenses" shall mean: (a) expenditures made or liabilities incurred by or on behalf of the Association in the performance of its duties under the Act, the Declaration, the Articles, the Bylaws or the Rules, whether or not the same may be expressly declared to be Common Expenses; and (b) costs of utility services, trash removal services and other similar services provided to the Project which are not charged to individual Owners.

2.09: Condominium Unit. "Condominium Unit" shall mean a Unit together with the undivided interest in the Common Elements allocated thereto by this instrument and the right to the exclusive use of the Limited Common Elements assigned thereto by this instrument (which exclusive use may be shared with one or more other Condominium Units). An individual Condominium Unit may be referred to in the Declaration by reference to such Condominium Unit's "identifying number" (as such term is defined in the Act). The identifying number of each Condominium Unit shall be the word "Unit" followed by a number and letter as more particularly described in Exhibit B attached hereto and by this reference incorporated herein.

2.10: Declarant. "Declarant" shall mean Airpark 550, LLC and any party that is designated as a successor or assign of Declarant pursuant to the provisions of the Declaration.

2.11: Declaration. "Declaration" shall mean this instrument, the Map and all amendments or supplements to this instrument and the Map hereafter recorded in the real property records of Eagle County, Colorado.

2.12: Easements. "Easements" shall mean the easements created pursuant to the provisions of Section 3.02 hereof.

2.13: Entity. "Entity" shall mean a corporation, general partnership, limited partnership, registered limited liability partnership, registered limited liability limited partnership, limited liability company, limited partnership association, nonprofit association, joint venture, trust or other legal entity capable of holding title to real property in Colorado.

2.14: First Lienor. "First Lienor" shall mean: (a) a Lienholder holding a Security Interest encumbering any portion of the Property which is recorded prior to the recording of this instrument and (b) a Lienholder holding a Security Interest encumbering a Condominium Unit which is recorded after the date of recording of this instrument and which has priority over all other Security Interests encumbering such Condominium Unit.

2.15: Guest. "Guest" shall mean any individual who is present at the Project at the express or implied invitation of an Owner including, without limitation, friends, relatives, agents, employees, tenants or business invitees of an Owner.

2.16: Lienholder. "Lienholder" shall mean the holder of a Security Interest encumbering any portion of the Property which is recorded prior to the recording of this instrument or encumbering a Condominium Unit which is recorded after the date of this instrument without regard to the priority of such Security Interest with respect to all Security Interests encumbering the same portion of the Property or the same Condominium Unit (as the case may be). A First Lienor is also a Lienholder.

2.17: Limited Common Elements. "Limited Common Elements" shall mean a portion of the Common Elements which are assigned by the Declaration or by operation of Section 202 (1)(b) or (1)(d) of the Act for the exclusive use of one or more Condominium Units but fewer than all of the Condominium Units. The Limited Common Elements consist of: (a) the limited common elements described in Sections 202(1)(b) and (1)(d) of the Act; and (b) any which are identified on the Map as "L.C.E." and followed by the identifying number of one of the Condominium Units.

2.18: Map. "Map" shall mean the "map" (as such term is defined in the Act) for the Project and may also include a "plat" (as such term is defined in the Act) of the Project, either or both of which shall meet the requirements of Sections 201 and 209 of the Act and shall be recorded in the real estate records of Eagle County, Colorado contemporaneously with the recording of this instrument.

2.19: Owner. "Owner" shall mean any individual or Entity that is the record owner of a fee simple interest in one or more Condominium Units according to the real property records of Eagle County, Colorado. Declarant is the initial Owner of each Condominium Unit.

2.20: Project. "Project" shall mean Airpark 550 Condominiums, the common interest community created by this instrument, and shall consist of the Property, the Building and all other improvements located on the Property.

2.21: *{Intentionally Omitted}*.

2.22: Rules. "Rules" shall mean the rules and regulations in effect from time to time as adopted by the Board of Directors in the manner set forth in the Declaration or pursuant to the Articles and Bylaws.

2.23: Security Interest. "Security Interest" shall mean an interest in real estate or personal property created by contract or conveyance securing payment or performance of an obligation which encumbers any portion of the Property and is recorded prior to the recording of this instrument or which encumbers a Condominium Unit and is recorded after the date of this instrument. A Security Interest 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.

2.24: Sharing Ratio. "Sharing Ratio" shall mean the percentage of the total undivided interests in the Common Elements allocated to a Condominium Unit pursuant to Section 3.01 (b) hereof. The formula utilized to determine the Sharing Ratio of each Condominium Unit is the square footage of each Unit divided by the total square footage of all units.

2.25: Unit. "Unit" shall mean a physical portion of the Project designated for separate ownership by individuals or entities the boundaries of which are determined from the Map together with (a) all fixtures and improvements contained within such boundaries; (b) the inner decorated or finished surfaces of all walls, floors and ceilings which constitute such boundaries; (c) all doors and windows which constitute such boundaries and (d) all space and interior, non-supporting walls contained within such boundaries.

**ARTICLE 3**  
**PROPERTY RIGHTS**

3.01: Condominium Units.

(a) The Property is hereby divided into Parcel A and Parcel B, and Parcel A is hereby divided into twelve (12) Condominium Units each of which has the identifying number set forth on Exhibit B attached hereto. Each Condominium Unit consists of: (i) the Unit identified either by such Condominium Unit's identifying number or by the letter and number portion of such Condominium Unit's identifying number (omitting the word "Unit") as shown on the Map, (ii) the undivided interest in the Common Elements allocated to such Condominium Unit pursuant to Section 3.01 (b) hereof and (iii) the exclusive right to use the Limited Common Elements assigned to such Condominium Unit pursuant to Section 3.01(c) hereof.

(b) The total undivided interests in the Common Elements are allocated to the Condominium Units in the percentages set forth on Exhibit B attached hereto. Some of the Common Elements may be identified on the Map as "G.C.E." or as "G.C.E." followed by a description of the anticipated use of the particular General Common Element. The description of the anticipated use of a particular Common Element on the Map shall not be deemed to restrict the use to which such Common Element may be put. The Association shall be entitled to determine the use of any Common Element and may change the use of such Common Element from the anticipated use of such Common element set forth on the Map.

(c) Those Limited Common Elements which are described in Sections 202(1)(b) and (1)(d) of the Act are assigned to the Condominium Units in accordance with the provisions of those Sections. Those Limited Common Elements which are shown on the Map and identified as described in Section 2.17(b) hereof are assigned to the Condominium Units in accordance with the identifying numbers of the Condominium Units included within the identification of such Limited Common Elements.

3.02: Easements.

(a) Declarant hereby makes, establishes, declares, grants and reserves a perpetual, non-exclusive easement in favor of each Owner and any governmental, quasi-governmental or private entity providing utility services to the Building over,

under across, upon, and through the Common Elements for installing, replacing, repairing, maintaining and providing all utility services to the Building including, without limitation, water, gas, electric, storm sewer, sanitary sewer, cable television, satellite communications and telephone services. No new facilities and equipment which provide such utility services may be installed or relocated in the Common Elements without the prior written approval of the Association. Any entity providing such utility services shall be responsible for any damage caused by such entity to the Common Elements and the Units while utilizing the Easement created by this Section 3.02 (a) and for any costs incurred by the Association as a result of such damage and shall be further required to promptly repair or restore any portion of the Common Elements and the Units disturbed or damaged by such entity's utilization of the Easement created by this Section 3.02(a). The Easement created by this Section 3.02(a) shall be appurtenant to each Condominium Unit so that a transfer of title to any interest in such Condominium Unit shall automatically transfer a proportionate interest in such Easement.

(b) Declarant hereby makes, establishes, declares, grants and reserves a perpetual, non-exclusive easement in favor of all police, sheriff, fire protection and ambulance services and any other provider of emergency services, over, across, upon and through those portions of the Common Elements designed to provide pedestrian and vehicular access to and within the Building for the purpose of performing the services of such providers of emergency services.

3.03: Title to Condominium Units. Title to a Condominium Unit may be held by an individual or any Entity or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Condominium Unit in which such Owner owns an interest.

3.04: Legal Description. Any contract of sale, deed, lease, Security Interest, will or other instrument affecting a Condominium Unit shall legally describe it substantially as follows:

"Condominium Unit \_\_\_\_\_, Airpark 550 Condominiums, Eagle County, Colorado; according to the Condominium Declaration for Airpark 550 Condominiums recorded on \_\_\_\_\_, 20\_\_\_\_, as Reception No. \_\_\_\_\_ the real estate

records of Eagle County, Colorado, and the Condominium Map of Airpark 550 Condominiums recorded on \_\_\_\_\_, 20\_\_\_\_, as Reception No. \_\_\_\_\_ of the real estate records of Eagle County, Colorado."

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, lease or otherwise affect not only the Condominium Unit, but also the interest in the Easements made appurtenant to such Condominium Unit by the Declaration. The interest in the Easements made appurtenant to any Condominium Unit shall be deemed conveyed or encumbered with that Condominium Unit, even though the legal description in the instrument conveying or encumbering such Condominium Unit may only refer to that Condominium Unit. The reference to the Declaration in any instrument shall be deemed to include any supplements or amendments to the Declaration, without specific reference thereto.

3.05: Separate Assessment. Declarant shall give written notice to the Assessor of Eagle County, Colorado requesting that the Condominium Units be separately assessed and taxed and that the total value of the Common Elements be assessed and taxed proportionately with each Condominium Unit in accordance with such Condominium Unit's Sharing Ratio as provided in Section 105 of the Act. After this instrument has been recorded in the real estate records of Eagle County, Colorado, Declarant shall deliver a copy of this instrument as recorded to the Assessor of Eagle County, Colorado.

3.06: Use Compliance. The use of the Condominium Units shall comply with: (a) the terms, conditions and obligations set forth in the Declaration; (b) any matters set forth on the Map; (c) the matters set forth on Exhibit C attached hereto and by this reference incorporated herein; (d) all present and future laws, rules, requirements, orders, directions, ordinances and regulations (including zoning regulations) affecting the Condominium Units of any governmental authority having jurisdiction over the Condominium Units and of their departments, bureaus or officials; and (e) all the terms of the Declaration of Covenants Valley Airpark recorded on July 18, 1996, in Book 700, Page 138; First Amendment recorded July 21, 1999, at Reception No. 703807; Second Amendment recorded on December 28, 2000, at Reception No. 747023 and Third Amendment recorded May 23, 2003, at Reception No. 834506.

3.07: No Partition of Common Elements. The Common Elements shall be owned in common by all of the Owners and are not subject to partition. Any purported



conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Condominium Unit to which such undivided interest is allocated shall be void in accordance with the provisions of Section 207(6) of the Act. This Section 3.07 shall not, however, limit or restrict the right of the Owners of a Condominium Unit to: (a) reallocate Limited Common Elements between or among the Condominium Units, relocate boundaries between adjoining Condominium Units or subdivide Condominium Units as described in Section 3.11 hereof or (b) bring a partition action pursuant to Article 28 of Title 38 of Colorado Revised Statutes requesting the sale of the Condominium Unit and the division of the proceeds among such Owners; provided that no physical division of the Condominium Unit or the Common Elements shall be permitted as a part of such action and no such action shall affect any other Condominium Unit.

3.08: Encroachments. If any part of the Common Elements now or hereafter encroaches upon any portion of any Unit, or if any part of a Unit now or hereafter encroaches upon any portion of another Unit or the Common Elements as a result of construction or as a result of settling or shifting after construction, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such Common Element or Unit (as the case may be) stands. In the event a Common Element or Unit shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of any part of such Common Element upon any portion of a Unit or encroachments of any part of such Unit upon any portion of another Unit or the Common Elements due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Common Element or Unit (as the case may be) shall stand.

3.09: No Mechanic's Liens.

(a) If any Owner shall cause any material to be furnished to such Owner's Condominium Unit or any labor to be performed therein or thereon, no Owner of any other Condominium Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to such Owner's Condominium Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Elements or any Condominium Unit other than that of

such Owner with any mechanic's or materialman's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Owner or any Owner's Condominium Unit for work done or materials furnished to any other Owner's Condominium Unit is hereby expressly denied.

(b) If, because of any act or omission of any Owner, any mechanic's or materialman's lien or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Condominium Unit or against any other Owner, Declarant or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose or which act or omission forms the basis for such lien or order shall at such Owner's own cost and expense cause the same to be canceled and discharged of record or bonded in an amount and by a surety company reasonably acceptable to the party or parties affected by such lien or order within 20 days after the filing thereof, and further shall indemnify and save all such parties harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorney's fees resulting therefrom.

### 3.10: Rights of Declarant.

(a) Declarant has created the Project with twelve (12) Condominium Units. Declarant reserves the right to create additional Condominium Units in the Project on the real property described on Exhibit C, which are "development rights" as defined in the Act, would include the rights to: (i) add real estate to the Project; (ii) create additional Condominium Units, Common Elements or Limited Common Elements within the Project (iii) subdivide Condominium Units or convert Condominium Units into Common Elements; and (iv) withdraw real estate from the Project; provided, however, that Declarant acting as an Owner shall be entitled to exercise the rights of an Owner described in Section 3.11 hereof.

(b) Declarant reserves the following "special declarant rights" (as such term is defined in the Act): (i) to complete any improvements which may be indicated on the Map; and (ii) to utilize the easements described in Section 4.02 hereof for the purpose of making improvements within the Project. All of the foregoing special declarant rights reserved by Declarant apply to all of the Property and must be exercised by Declarant, if at all, during the twenty year period following the date of this instrument. Declarant reserves the following special declarant rights: (i) to make the Project subject to a master association in accordance with the provisions of Section 220 of the Act; (ii)

to merge or consolidate the Project with another condominium in accordance with the provisions of Section 221 of the Act; and (iii) to appoint or remove any officer or director of the Association during any period of Declarant control as provided in Section 303 of the Act.

3.11 Rights of Owners. The Owners shall have the following rights with respect to their Condominium Units: (a) the right to reallocate Limited Common Elements between or among Condominium Units in accordance with the provisions of Section 208(2) of the Act; (b) subject to the provisions of Article 5 hereof, the right to make alterations to a Condominium Unit in accordance with the provisions of Section 211 of the Act; (c) subject to the provisions of Article 5 hereof and provided that it can be demonstrated by reasonable evidence as a part of the approval procedures required by Article 5 hereof that the exercise of such right will not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Project, the right to construct a partition between two Condominium Units which do not have a partition between them even though such partition shall become a Common Element upon completion of its construction; and the exercise of such right shall not be considered a relocation of boundaries between Condominium Units; (d) the right to relocate boundaries between adjoining Condominium Units in accordance with the provisions of Section 212 of the Act; and (e) the right to subdivide a Condominium Unit in accordance with the provisions of Section 213 of the Act.

#### **ARTICLE 4** **RESTRICTIONS**

4.01: Use and Occupancy Restrictions. The Commercial Units shall be used and occupied solely for storage and operation of the Unit Owners' trade or service business, and for such other purposes as are incidental to such uses and occupancies. All of the uses and occupancies described in this Section 4.01 shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use laws from time to time in effect. An Owner shall have the right to lease all or a portion of such Owner's Condominium Unit upon such terms and conditions as such Owner may deem advisable; provided, however, that (a) any such lease shall be in writing and shall provide that the lease is subject to the terms of the Declaration, (b) a Condominium Unit may be leased only for the uses and occupancies described in this Section 4.01, and (c) any failure of a lessee to comply with the terms of the Declaration, the Articles, the Bylaws, or the Rules shall constitute a default by such Owner under the applicable document.

4.02: Declarant, its agents, employees and contractors hereby reserve an easement over, across, through and upon the Common Elements for the purpose of: (i) discharging Declarant's obligations under the Declaration or the Act; (ii) exercising any of the special declarant rights described in Section 3.10(b) hereof or (iii) exercising any of Declarant's other rights under the Declaration or the Act.

4.03: *{Intentionally Omitted}*.

4.04: Parking. Parking shall be permitted only by Owners and Guests in a parking space which is a part of the Common Elements other than the Limited Common Elements and which is specifically marked as a parking space. Each Owner is limited to three (3) spaces per Unit. Unit Owners may lease or give another Owner permission to use any unused space allocated to the Owner to other Owners, provided a written lease agreement for the space signed by both Owners and a copy of the lease agreement is delivered to the manager or an officer of the Association. No buses, trailers, mobile homes, truck campers, detached camper units, boats or commercial vehicles may be parked anywhere in the Project except (i) when parked and stored inside the Building; (ii) while making deliveries or providing services to the Project or (iii) in connection with the construction of the Building. Those parking spaces which are available for use shall be used only for parking automobiles and motorcycles and not for any other storage purposes.

4.05: Signs. (a) Except for the signs which are currently on the Project, no signs of any kind or nature shall be placed on any portion of the Project by any Owner without the prior written approval of the Board of Directors of the size and design of any proposed sign, which approval may be granted or withheld by the Board of Directors based upon the standard that all signs must be compatible with the architecture of the Project and any other standards contained in the Rules. The process for obtaining the approval of the Board of Directors of any proposed sign is set forth in Section 5.02 hereof and the liability of the Board of Directors with respect to such approval process is limited in the manner set forth in Section 5.03 hereof.

(b) The Association shall have the right to place signs on the exterior of any Unit or on the Common Elements which either provide the identifying number of one or more Condominium Units or provide information concerning any Rules adopted by the Board of Directors, the administration or management of the Project or the identification of the Project.

4.06: Unsightly Conditions. No unsightly objects or materials shall be placed on the exterior portions of a Condominium Unit or the Common Elements. No part of a Condominium Unit or the Common Elements shall be used as a dumping ground for garbage, trash or waste and the same shall be stored in a covered container and disposed of in a sanitary manner. No outside storage shall be permitted on any portion of the Common Elements except in connection with the construction of the Building or except with the prior written permission of the Association.

4.07: No Noxious, Offensive Hazardous or Annoying Activities. No noxious or offensive activity shall be carried on upon any part of the Project nor shall anything be done or placed on any part of the Project which is or may become a nuisance or cause any unreasonable disturbance or annoyance to others. No activities shall be conducted on any part of the Project which are or might be unsafe or hazardous to any person or property. No glaring light, loud or annoying sound or vibration, smoke or unpleasant odor arising from the use of a Condominium Unit shall be permitted.

4.08: No Imperiling of Insurance. No Owner and no Owner's Guests shall do anything or cause anything to be kept in or on the Project that might result in an increase in the premiums of insurance obtained by the Association for the Project or which might cause cancellation of such insurance without the prior written consent of the Association first having been obtained.

4.09: No Violation of Law. No Owner and no Owner's Guests shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

4.10: No Time Share Estate. No Owner of any Condominium Unit shall be entitled to subject such Owner's Condominium Unit to a "time share estate" (as such term is defined in Section 38-33-110 of Colorado Revised Statutes) unless such Owner shall have obtained the prior written consent of all of the Owners of the other Condominium Units.

4.11: Variances. The Board of Directors shall be entitled to grant reasonable variances to the restrictions contained in this Article 4 in order to prevent undue hardship to any Owner or for any other good cause shown to exist by an Owner. Any

such variance may be granted upon any such conditions as the Board of Directors shall determine.

## **ARTICLE 5** **ARCHITECTURAL CONTROL**

5.01: Approval of Alterations. An Owner shall be entitled to alter the Condominium Unit owned by such Owner only in accordance with the rights of Owners described in Sections 3.11(b) and (c) and no such alterations may be undertaken without in each case obtaining the prior written approval of the Board of Directors of the proposed alteration. In considering each request for approval, the Board of Directors shall attempt to maintain the first-class appearance of the Project and to assure that all Condominium Units are architecturally compatible.

5.02: Approval Procedures. Whenever any Owner requests approval from the Board of Directors as described in Sections 4.05 or 5.01 hereof, the Board of Directors may request that such Owner provide the Board of Directors which such items as the Board may reasonably request in order to inform the Board of Directors about the matter requiring approval. The Board of Directors shall not be required to take any action with respect to a requested approval unless and until the Board of Directors receives all items reasonably requested by the Board of Directors. Once all of such items have been furnished to the Board of Directors, the Board of Directors shall have 30 days to approve the request as submitted, to approve the request with such reasonable conditions as the Board of Directors may require or to reject the request and, if the Board of Directors does not so act within such 30 day period, the request shall be deemed approved as submitted. If the request is approved, the matter approved shall be undertaken by the Owner in accordance with the items submitted to the Board of Directors and any conditions placed upon such approval by the Board of Directors.

5.03: No Liability. The Board of Directors shall not be responsible or liable for damages because of any failure to act, disapproval or failure to approve or disapprove any request for approval described in Sections 4.05 or 5.01 hereof or because of any defects in any items submitted to the Board of Directors in connection with any request for approval. Any Owner requesting approval by the Board of Directors by so doing agrees and covenants not to bring any action or suit to recover damages against the Board of Directors, its members as individuals, or its advisors, employees or agents or the Association and its officers and members.

**ARTICLE 6**  
**THE ASSOCIATION**

6.01: Membership.

(a) Declarant shall be a member of the Association for so long as Declarant is the Owner of any Condominium Unit. Each individual and Entity shall automatically become a member of the Association upon becoming an Owner of a Condominium Unit. Membership shall be continuous throughout the period that such ownership continues and shall be appurtenant to and inseparable from ownership of a Condominium Unit. Membership shall terminate automatically without any Association action whenever Declarant or any other Owner ceases to own a Condominium Unit. Termination of membership shall not relieve or release any former member from any liability or obligation incurred by virtue of or in any way connected with ownership of a Condominium Unit or membership in the Association, or impair any rights or remedies which the Association or others may have against such former member arising out of or in any way connected with such ownership or membership.

(b) (i) The total number of votes in the Association shall be 100. The votes are hereby allocated to each Condominium Unit by multiplying the Sharing Ratio of such Condominium Unit by 100.

(ii) If there is only one Owner of a Condominium Unit, such Owner shall be entitled to cast the votes allocated to such Condominium Unit at any meeting of members. If there are multiple Owners of a Condominium Unit and only one of such multiple Owners is present at a meeting of the members, such Owner shall be entitled to cast the votes allocated to such Condominium Unit. If there are multiple Owners of a Condominium Unit and more than one of the multiple Owners of such Condominium Unit are present at a meeting of the members, the votes allocated to such Condominium Unit may be cast only in accordance with the agreement of a majority in interest of such Owners as such agreement may be reasonably evidenced to the person presiding over such meeting. It is reasonable evidence of the agreement of a majority in interest of multiple Owners of a Condominium Unit if any one of such Owners casts the votes allocated to such Condominium Unit without protest being made promptly to the person presiding over the meeting of the members by any of the other Owners of such Condominium Unit. Declarant and each member which is an Entity shall from time to time designate in writing to the Association one or more individuals who may represent

it at a meeting, and vote on its behalf. Until the Association is notified in writing to the contrary, any action taken by any person(s) designated in writing to represent Declarant or such Entity member shall be binding upon Declarant or such Entity member (as the case may be).

(c) The rights and obligations of members of the Association are further delineated in the Articles, the Bylaws and the Rules and each Owner is advised to obtain copies of the then current Articles, Bylaws and Rules upon becoming an Owner.

(d) Each member shall comply strictly with the provisions of the Declaration, the Articles, the Bylaws and the Rules. The failure of a member to comply strictly with any of such provisions shall permit the Association to suspend a member's voting rights while in noncompliance and to take the actions outlined in Section 12.01 hereof. In addition, the Bylaws and the Rules may permit the Association to take further actions in the event of noncompliance by a member with such provisions.

#### 6.02: Powers of the Association.

(a) The Project shall be administered and managed by the Association pursuant to the Declaration, the Articles, the Bylaws, the Rules and the Act. The Association shall have all of the powers expressed in, or implied from, the provisions of the Declaration, the Articles, the Bylaws, the Rules and the Act subject; however to the following limitations:

(i) except for the power to grant easements, leases, licenses and concessions through or over the Common Elements set forth in Section 302(1)(i) of the Act, the Association shall not convey or encumber the Common Elements unless Owners entitled to cast at least 67 percent of the total votes in the Association, including at least 67 percent of the votes allocated to Condominium Units not owned by Declarant, and all First Lienors have given their approval thereof and unless the provisions of Section 312 of the Act have been complied with;

(ii) the Association shall be organized and operated exclusively for pleasure, recreational and other non-profitable purposes as set forth in Section 501(c)(7) of the Internal Revenue Code of 1986, as it is now or may hereafter be amended, or in any corresponding provisions of any future law of the United States of America providing for the exemption of similar organizations from income taxation; and



(iii) no part of the net earnings of the Association shall inure to the benefit of any member of the Association.

(b) Without limiting the generality of the foregoing, the Association shall have the power from time to time as it deems necessary and appropriate to adopt, amend and enforce the Rules in order to administer and manage the Project and to implement the provisions of the Declaration including without limitation, Rules intended to promote the general health, safety and welfare of persons within the Project, to protect and preserve property and to regulate the use of the Common Elements. All of the Rules adopted by the Association shall be reasonable and shall be uniformly applied. The Association may provide for enforcement of the Rules through reasonable and uniformly applied fines and penalties, which shall be collectable by the Association as a charge pursuant to the provisions of Section 8.04 hereof. Each Owner, and such Owner's Guest shall be obligated to and shall comply with and abide by the Rules and pay such fines or penalties upon failure to comply with or abide by the Rules. The Association shall not be responsible to any Owner or Guest for the non-observance by any other Owner or Guest of the Rules.

6.03: Board of Directors. The Board of Directors is designated to act on behalf of the Association and shall be responsible for the control and management of the Association and the disposition of its funds and property; provided; however that the Board of Directors may not act on behalf of the Association to: (a) amend the Declaration, (b) terminate the Project except as set forth in Sections 10.02 and 11.02 hereof and in Section 218 of the Act; or (c) elect directors or determine the qualifications, powers and duties, or terms of office of directors, but the Board of Directors may fill vacancies in the Board of Directors for the unexpired portion of any term. The number of directors (which shall not be less than three), their terms of office and their qualifications shall be determined according to the Bylaws. The members of the Association shall elect all directors. Within 60 days after the Owners other than Declarant elect a majority of the directors, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including without limitation, the items specified in Sections 303(9)(a) through (1) of the Act.

6.04: Officers. The officers of the Association shall be a president, a secretary, a treasurer and such other officers as may from time to time be prescribed by the Bylaws. The Board of Directors shall elect all officers of the Association and may fill any

vacancy in any office for the unexpired term. The terms of office of the officers of the Association and their qualifications shall be determined according to the Bylaws.

**ARTICLE 7**  
**MAINTENANCE AND INSURANCE**

7.01: Maintenance by Owners.

(a) Each Owner shall be responsible for maintaining in a clean, safe, attractive and sightly condition and in good order and repair consistent with the high standards of the Project, the interior portion of such Owner's Unit, the exterior windows and doors of such Owner's Unit and the facilities for providing water, sewer, electrical, natural gas, telephone, cable television and other utility services located within such Owner's Unit and providing such utility services to such Owner's Unit, but such Owner shall not be responsible for the maintenance of any facilities providing such utility services to any other Unit or the Common Elements.

(b) In performing the maintenance required by Section 7.01(a) hereof, no Owner shall do any act or work which impairs or otherwise affects the Common Elements. If, in the reasonable judgment of the Association, an Owner has failed to maintain those portions of such Owner's Condominium Unit which such Owner is required to maintain by the provisions of Section 7.01(a) hereof in accordance with the standards set forth in Section 7.01(a) hereof, the Association may, after 10 days' notice to such Owner, perform all work deemed necessary by the Association to place such Condominium Unit in conformity with the foregoing standards and shall have access to such Condominium Unit for such purposes. The Association shall be reimbursed by the Owner who or which failed to adequately maintain such Owner's Condominium Unit for all costs of the work performed by the Association pursuant to the authorization contained in the preceding sentence in the manner set forth in Section 8.04 hereof.

7.02: Maintenance by the Association.

(a) The Association shall be responsible for maintaining those portions of the Condominium Units which are not required by the provisions of Section 7.01(a) hereof to be maintained by the Owners and for maintaining the Common Elements.

(b) The costs of the maintenance required of the Association by the provisions of Section 7.02(a) hereof shall be a Common Expense. If, however, the need to perform

such maintenance results from the negligence or intentional act of an Owner or such Owner's Guests, such Owner shall reimburse the Association for all costs of such maintenance and repair in the manner set forth in Section 8.04 hereof.

7.03: Insurance.

(a) The Association shall provide and keep in force the following insurance:

(i) Property damage insurance on the Buildings (including the Common Elements and the Units which are a part of the Building but excluding the finished interior surfaces of the walls, floors and ceilings of the Units and any improvements or betterments installed in such Units by the Owners) and on any other Common Elements which are not a part of the Building (including fixtures and building service equipment and common personal property and supplies owned by the Association) insuring against loss by fire, lightning and the risks covered by the "all risks" endorsement of the insurer (which risks shall include at least vandalism, malicious mischief and those risks covered by a standard broad form coverage endorsement) in an amount not less than the full replacement cost of the insured property (without deduction for depreciation but less applicable deductibles and exclusive of the costs of land, excavation, foundations, paving and other items normally excluded from property policies) in an agreed amount endorsement. Such insurance shall be carried in blanket policy form naming the Association as the insured. Any loss covered by such insurance must be adjusted with the Association whether or not the insurance proceeds with respect to that loss are payable to the Association. Such insurance proceeds shall be payable to the Association unless the Association shall have previously designated in writing an insurance trustee for that purpose, but in no event shall such insurance proceeds be payable to any Lienholder. The Association or the insurance trustee receiving such insurance proceeds shall hold such insurance proceeds in trust for the Association, the Owners and the Lienholders as their interests may appear. Such insurance proceeds shall be disbursed in accordance with the provisions of Section 9.02 hereof and the Association, the Owners and the Lienholders are not entitled to receive payment of any portion of such insurance proceeds unless there is a surplus of such insurance proceeds after such disbursements have been made.

(ii) Commercial general public liability insurance for the protection of the Owners, the Association, the officers and directors of the Association, the managing agent engaged by the Association (if any) and the respective employees, agents and contractors of the Association and such managing agent (if any), as their interests may appear, insuring against any liability arising from the ownership, existence, use, or management of the Common Elements (including liability for death, personal injury and

property damage) in the combined single limit amount of \$1,000,000.00 or in such greater amount as the Association shall determine. Such insurance shall cover claims of one or more insured parties against other insured parties.

(iii) Fidelity insurance in an amount not less than one-sixth of the then current aggregate annual assessments of the Association plus reserves, as calculated from the then current Budget, covering the directors and officers of the Association, any Owner or employee of the Association who controls or disburses funds of the Association and, at the election of the Association, covering any managing agent engaged by the Association. The Association may also require any managing agent engaged by the Association to carry fidelity insurance in accordance with the provisions of the Bylaws.

(iv) Directors and officers liability insurance and errors and omissions insurance coverage in such amounts as the Association shall determine for the protection of the Association, its officers, directors and employees, but only if such insurance is available to the Association without payment of a premium or premiums which is or are, in the judgment of the Association, excessive.

(v) Such other insurance in such amounts as the Association may consider necessary or advisable against such other insurable hazards as the Association may from time to time wish to insure against.

(b) All insurance which is carried by the Association pursuant to the provisions of Section 7.03(a) hereof shall be issued by responsible insurance companies authorized to do business in the State of Colorado. Each policy of insurance described in Sections 7.03 (a)(i) and (ii) hereof shall contain the following provisions: (i) such policy shall not be materially modified or canceled without at least 30 days prior written notice to the Association and to each Owner and Lienholder whose or which name and address has been made known to the insurer; (ii) the insurer waives its rights of subrogation under such policy as to any claim against the Association, its officers, directors and employees, any Owner and members of such Owner's household and any Lienholder; (iii) each Owner is an insured person under such policy with respect to liability arising out of such Owner's ownership interest in the Common Elements or membership in the Association; (iv) no act or omission by an Owner, unless acting within the scope of such Owner's authority on behalf of the Association, shall void such policy or operate as a condition to recovery under such policy; and (v) if, at the time of loss under such policy, there is other insurance in the name of an Owner

covering the risk covered by such policy, the Association's policy shall provide primary insurance. If the insurance described in Sections 7.03 (a)(i) and (ii) hereof 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 such fact to be hand delivered or sent prepaid by United States mail to all Owners and First Lienors.

(c) Each Owner shall be solely responsible for obtaining and maintaining any insurance covering loss or damage to the finished interior surfaces of the walls, floors and ceilings of the Unit of such Owner's Condominium Unit, any improvements and betterments installed by an Owner of such Unit, and any personal property in such Owner's Unit and covering liability for injury, death or damage occurring inside such Owner's Unit. Any policy of such insurance shall contain waivers of subrogation as to any claim against the Association, its officers, directors and employees, any Owner and such Owner's Guests and any First Lienor and shall be so written that the liability of the insurers issuing insurance obtained by the Association shall not be affected or diminished thereby.

(d) The costs of obtaining and maintaining all insurance which is carried by the Association pursuant to the provisions of Section 7.03(a) hereof shall be a Common Expense to be prorated among all Owners as set forth in the Declaration, notwithstanding the fact that the Owners may have disproportionate liability. To the extent that the Association settles claims under the insurance described in Section 7.03(a)(i) hereof for damages to real property, any Owner whose negligence caused such loss shall reimburse the Association for the amount of all deductibles paid by the Association with respect to such claims in the manner set forth in Section 8.04 hereof.

## **ARTICLE 8**

### **ASSESSMENTS AND CHARGES**

#### **8.01: Annual Assessments.**

(a) Until the Association establishes an annual assessment for Common Expenses for the initial fiscal year of the Association, Declarant shall pay all Common Expenses. The Association shall establish prior to the conveyance of any Condominium Unit by Declarant, an annual assessment with respect to the initial fiscal year of the Association for the purpose of paying or creating a reserve for Common Expenses. The amount of the annual assessment for the initial fiscal year of the Association and for

(b) After the initial fiscal year of the Association or in the event the Association desires to make an adjustment to an annual assessment previously established during a fiscal year, the Board of Directors shall adopt a proposed Budget to serve as the basis for the establishment of the annual assessment or the adjustment to the annual assessment (as the case may be). Within the time period provided by Section 303(f) of the Act, after the adoption of such proposed Budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of such proposed Budget to all Owners and shall set a date for a meeting of Owners to consider ratification of such proposed Budget. Unless at that meeting Owners holding at least 75 percent or more of the total votes of the Association reject such proposed Budget, such proposed Budget is ratified, whether or not a quorum is present. In the event such proposed Budget is rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board of Directors and the proposed annual assessment or adjustment to the annual assessment shall be based upon such continued Budget.

each fiscal year thereafter shall be based upon the Budget adopted by the Association. The Budget shall be based upon a good faith estimate of the Common Expenses to be paid or reserved for the fiscal year covered by the Budget including, without limitation, an estimate of the costs of the maintenance and repair required to be performed by the Association pursuant to the provisions of Section 7.02 hereof during such fiscal year, an estimate of the costs of the insurance described in Section 7.03 hereof to be obtained by the Association during such fiscal year and an estimate of the amount of funds to be reserved during such fiscal year for the costs of the periodic refurbishing and replacement of those items which are to be maintained by the Association pursuant to the provisions of Section 7.02 hereof as such items wear out or become obsolete so that the costs of such periodic refurbishing or replacement may be paid through the annual assessments instead of special assessments. The Board of Directors shall establish the annual assessment for the initial fiscal year of the Association without a vote of the Owners. The annual assessment for any fiscal year after the initial fiscal year shall be established only after a Budget is adopted in accordance with the provisions of Section 8.01(b) hereof. The Association may adjust the amount of an annual assessment during the fiscal year covered by such annual assessment from time to time as the Association may in its discretion deem necessary or advisable, but any such adjustment shall be based upon a revised Budget adopted by the Association in accordance with the provisions of Section 8.01(b) hereof.

8.02: Special Assessments. In addition to the annual assessments authorized in Section 8.01 hereof, the Association may establish at any time a special assessment for the purpose of paying or creating a reserve for, in whole or in part, the cost of any expense which the Association is entitled to incur pursuant to the provisions of the Declaration or the Bylaws and which is not scheduled to be paid in a Budget adopted by the Association. No special assessment may be levied by the Association unless such special assessment has been approved by the Board of Directors and by the majority vote of the Owners present in person or proxy at a meeting called for such purpose at which a quorum was present.

8.03: Payments of Assessments. All annual assessments shall be payable in equal monthly installments. Each monthly installment of the annual assessments shall be due on the first day of the month in the amount specified in the most recent written notice from the Association until the Association notifies an Owner in writing of a different amount. At the option of the Association, special assessments may be payable in a lump sum or in quarterly or monthly installments. Each special assessment shall be due on the date established by the Association after the Association gives an Owner notice of the amount of such Owner's assessment. The Association may charge and collect interest at an annual rate of 18 percent on any annual or special assessment which is not paid when due. If the Association engages an attorney to collect any annual or special assessment not paid when due, the Owner responsible for the payment of such annual or special assessment shall reimburse the Association for all costs of collection of such annual or special assessment including, without limitation, reasonable attorneys' fees.

8.04: Charges. Each Owner shall be liable for all charges with respect to such Owner or such Owner's Condominium Unit as set forth in the Declaration which include, but are not limited to, the costs to be reimbursed to the Association by an Owner pursuant to the provisions of Sections 7.01(b), 7.02(b) and 7.03(d) hereof and fines and penalties for violations of the Rules as described in Section 6.02(b) hereof. Any charge shall be due within 10 days after notice of the amount of such charge is delivered to an Owner and, if not paid when due, shall bear interest at an annual rate of 15 percent. If the Association engages an attorney to collect any such charge not paid when due, the Owner responsible for the payment of such charge shall reimburse the Association for all costs of collection of such charge including, without limitation, reasonable attorneys' fees. Any charge collected by the Association shall be used by the Association in furtherance of its duties hereunder or to defray Common Expenses.

8.05: Liability of Owners.

(a) The liability for annual and special assessments of the Common Expenses is hereby allocated to each Condominium Unit in the same percentage as the Sharing Ratio of such Condominium Unit subject, however, to the following exceptions:

(i) any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Condominium Units to which that Limited Common Element is assigned in proportion to the Sharing Ratio of each such Condominium Unit to the Sharing Ratios of all such Condominium Units.

(b) The amount of any annual and special assessment and charges payable with respect to an Owner or such Owner's Condominium Unit shall be a personal obligation of the Owner of such Condominium Unit and such Owner's heirs, devisees, personal representatives, successors and assigns and, if there are multiple Owners of one Condominium Unit, such obligation shall be a joint and several obligation of each Owner of such Condominium Unit. Except as set forth in Section 8.06 hereof, a party acquiring fee simple title to a Condominium Unit shall be jointly and severally liable with the former Owner of the Condominium Unit for all such amounts which had accrued and were payable at the time of the acquisition of fee simple title to the Condominium Unit by such party without prejudice to such party's right to recover any of such amounts paid by such party from the former Owner. No Owner shall be exempt from liability for payment of such Owner's share of the Common Expenses either by waiver of the use or enjoyment of the Common Elements or Easements or by abandonment of such Owner's Condominium Unit.

8.06: Liability of Lienholders. The transfer of title to a Condominium Unit pursuant to a foreclosure of a Security Interest encumbering such Condominium Unit or pursuant to any procedure in lieu thereof shall not extinguish the lien for annual and special assessments and charges against such Condominium Unit described in Section 8.07 hereof as to payments which become due prior to such transfer unless and to the extent such Security Interest has priority over the Association's lien as specified in Section 316 (2) of the Act. A Lienholder shall not be personally liable for any assessment or charge payable by the Owner of the Condominium Unit encumbered by the Security Interest held by such Lienholder, but the Association agrees to accept any payment of such assessment or charge made voluntarily on behalf of such Owner by such First Lienor.



8.07: The Association's Lien. The Association shall have from the date of recording of this instrument a lien against each Condominium Unit to secure payment to the Association of all annual and special assessments with respect to such Condominium Unit and all charges with respect to each Owner of such Condominium Unit together with interest thereon at the annual rate of 18 percent from the due date thereof and together with all costs and expenses of collecting such assessments and charges including, without limitation, reasonable attorneys' fees. The Association's lien shall be prior and superior to all other liens and encumbrances on a Condominium Unit except: (a) liens and encumbrances recorded prior to the recordation of this instrument; (b) the Security Interest of a First Lienor with respect to such Condominium Unit except to the extent specified in Section 316 (2)(b) of the Act; (c) liens for real estate taxes and other governmental charges against such Condominium Unit and (d) mechanic's and materialman's liens which by law may be prior to the Association's lien. The Association's lien shall attach from the date of recording of this instrument and shall be considered perfected without the necessity of recording a notice of default and claim of lien. Nevertheless, the Association shall, as a condition to enforcement of the Association's lien, record a notice of default and claim of lien which shall be executed by an officer or director of the Association and which shall contain substantially the following information: (i) the legal description of the Condominium Unit against which the lien is claimed; (ii) the names of the defaulting Owners as indicated by the Association's records; (iii) the total unpaid amount together with interest thereon and the costs of collection as of the date of such notice; (iv) a statement that the notice of default and claim of lien is made by the Association pursuant to the Declaration, and (v) a statement that a lien is claimed and will be foreclosed against such Condominium Unit in an amount equal to the amount stated as then due and any additional amounts thereafter becoming due. The Association's lien may be foreclosed in the manner provided by Colorado for the foreclosure of mortgages encumbering real property. At its option, the Association may recover any amounts claimed to be due in a notice of default and claim of lien by an action for a money judgment. In any such foreclosure or action, the Owners of the Condominium Unit subject to such foreclosure or action shall be required to pay the costs and expenses of such proceedings including, without limitation, reasonable attorneys' fees. The Association shall be entitled to purchase the Condominium Unit at any foreclosure sale, and to acquire, hold, lease, mortgage or convey the same. In any such foreclosure or action, the Court may appoint a receiver to collect all sums alleged to be due from the Owners prior to or during the pendency of such foreclosure or action. The Court may order the receiver so appointed to pay any sums held by such receiver to the Association during the pendency of such

foreclosure or action to the extent of the unpaid annual and special assessments and charges.

8.08: Statement of Unpaid Assessments and Charges. The Association shall furnish to an Owner of a Condominium Unit, a designee of such Owner, a Lienholder with respect to a Condominium Unit or a designee of such Lienholder, 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 the unpaid annual and special assessments and charges, if any, with respect to such Condominium Unit. Such statement shall be furnished within 14 calendar days after receipt of the request and is binding upon the Association, the Board of Directors and every Owner. If no statement is furnished to the requesting party delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the requesting party within such 14 calendar day period, then the Association shall have no right to assert a lien upon the Condominium Unit for unpaid annual and special assessments and charges which were due as of the date of the request.

8.09: Surplus Funds. Upon the determination by the Board of Directors that surplus funds of the Association remain after payment or provision for Common Expenses and any prepayment or provision for reserves as described in Section 314 of the Act, the Board of Directors may decide either to distribute such surplus funds to the Owners in accordance with the respective Sharing Ratios of their Condominium Units or to credit such surplus funds to the Owners in accordance with the respective Sharing Ratios of their Condominium Units against their respective liabilities for future Common Expenses.

## **ARTICLE 9**

### **DAMAGE OR DESTRUCTION**

9.01: Requirement of Repair and Replacement. In the event of any damage or destruction to any portion of the Project for which insurance is required under the provisions of Section 7.03(a)(i) hereof, the Association shall cause such damaged or destroyed portion of the Project to be fully repaired or replaced promptly after the occurrence of such damage or destruction unless:

(a) Prior to the Association undertaking such repair or replacement, the Project is terminated in the manner described in Section 10.02 hereof;

(b) Such repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

(c) Prior to the Association undertaking such repair or replacement, Owners entitled to vote at least 67 percent of the votes of the Association (which must include every Owner of a Condominium Unit which is not proposed to have the Unit thereof or any Limited Common Element assigned thereto fully rebuilt) and all First Lienors agree in writing to a plan to only partially repair or replace the damaged or destroyed portion of the Project. If such a plan is so agreed upon, the Association shall promptly: (i) undertake the repair or replacement provided for in such plan; (ii) restore the portion of the Project not to be repaired or replaced pursuant to such plan to a condition compatible with the remainder of the Project and (iii) prepare, execute and record an amendment to the Declaration which reflects any reallocation of "allocated interests" (as such term is defined in the Act) of any Condominium Unit which is not fully rebuilt which is automatically made pursuant to the provisions of Section 313(9)(b)(II) of the Act; or

(d) Prior to the conveyance of any Condominium Unit to an individual or Entity other than Declarant, a Lienholder whose or which Security Interest encumbers all or any portion of the damaged or destroyed portion of the Project rightfully demands all or a substantial part of the insurance proceeds payable as a result of such damage or destruction.

9.02: Insurance Proceeds.

(a) The insurance proceeds paid to the Association as a result of the damage or destruction of any portion of the Project shall be disbursed by the Association as follows:

(i) If the damaged or destroyed portion of the Project is fully repaired or replaced, the insurance proceeds shall be disbursed first to the expenses of such repair or replacement and the remainder shall be disbursed to the Owner of each Condominium Unit or the Lienholder with respect to such Condominium Unit, as their interests may appear, in accordance with the Sharing Ratio of such Condominium Unit; and

(ii) If the damaged or destroyed portion of the Project is not fully repaired or replaced, (A) the insurance proceeds attributable to a Condominium Unit which will not have the Unit thereof or the Limited Common Elements assigned thereto fully rebuilt shall be disbursed first to the expenses of restoring the portion not fully repaired or replaced to a condition compatible with the remainder of the Project and second to the Owner of such Condominium Unit or the Lienholder with respect to such Condominium Unit, as their interests may appear, and (B) all other insurance proceeds shall be disbursed as set forth in Section 9.02(a)(i) hereof except that the Sharing Ratio to be used for such disbursement shall be the Sharing Ratio after any reallocation of allocated interests referred to in Section 9.01(c) hereof.

(b) If the costs of the repair or replacement of the damaged or destroyed portion of the Project required by Section 9.01 hereof are in excess of the insurance proceeds paid to the Association as a result of such damage or destruction, the excess amount shall be a Common Expense payable by the Owners in accordance with their respective liabilities for Common Expenses after any reallocation of allocated interests referred to in Section 9.01(c) hereof.

9.03: Notice to First Lienors. Promptly after the occurrence of any fire or other casualty which causes damage or destruction of any portion of the Project which the Association estimates will cost \$10,000 or more to repair, the Association shall deliver written notice thereof to all First Lienors. The delivery of such written notice shall not be construed as imposing any liability whatever on any First Lienor to pay all or any part of the costs of repair or restoration. Further, the provisions of Section 9.02 hereof shall not be construed as limiting in any way the right of a First Lienor (in case the insurance proceeds disbursed in accordance with the provisions of Section 9.02 hereof shall be insufficient to pay the indebtedness held by such First Lienor) to assert and enforce the personal liability for such deficiency of the person or persons responsible for payment of such indebtedness.

## **ARTICLE 10**

### **RESTORATION AND TERMINATION**

10.01: Restoration. If at any time the Owners entitled to vote at least 67 percent of the votes of the Association and all First Lienors shall agree that all Condominium Units have become obsolete and shall approve a plan for their renovation or restoration, the Association shall promptly cause such renovation or restoration to be

made according to such plan. All Owners shall be bound by the terms of such plan and the costs of the work shall be a Common Expense.

10.02: Termination. If at any time an agreement to terminate the Project is obtained from Owners entitled to vote at least 67 percent of the votes of the Association and from all First Lienors in accordance with the provisions of Section 218 of the Act, the Association shall promptly undertake the actions required of the Association under the provisions of Section 218 of the Act. Upon completion of such actions by the Association, the Declaration shall automatically terminate without any further action.

## **ARTICLE 11** **CONDEMNATION**

11.01: Appointment of Association as Attorney-in-Fact. Each Owner, on such Owner's behalf and on behalf of such Owner's heirs, devisees, personal representatives, successors and assigns, does irrevocably constitute and appoint the Association with full power of substitution, as such Owner's true and lawful attorney in such Owner's name, place and stead to deal with such Owner's interest in such Owner's Condominium Unit upon condemnation of such Owner's Condominium Unit with full power, right and authorization to execute, acknowledge and deliver any contract, deed or other document affecting the interest of such Owner, and to take any other action which the Association may consider necessary or advisable to give effect to the provisions of this Article 11. If requested to do so by the Association, each Owner shall execute and deliver a written instrument confirming such appointment. The action of the Association in settling any condemnation claim shall be final and binding on all Owners.

11.02: Entire Taking. If the entire Project is taken under any statute, by right of eminent domain, or by purchase in lieu thereof, or if any part of the Project is taken and the part remaining may not practically or lawfully be used for any purpose permitted by the Declaration, the Association (as attorney-in-fact for the Owners) shall collect the award made in such taking and shall sell the part of the Property remaining after the taking, if any, free and clear of the provisions of the Declaration which shall automatically terminate upon the recording of a notice by the Association setting forth all of such facts without any further action. The award and the proceeds of such sale, if any, shall be distributed by the Association in the manner provided in Section 218 of the Act.

11.03:Partial Taking. If a taking occurs other than a taking specified in Section 11.02 hereof, then the Association (as attorney-in-fact for the Owners) shall collect the award made in such taking, shall promptly cause the portion of the Project not so taken to be restored as nearly as possible to its condition prior to the taking, and shall prepare, execute and record an amendment to the Declaration which confirms any reallocation of the allocated interests of any Condominium Units automatically made pursuant to the provisions of Section 107 of the Act. The costs of such restoration shall be a Common Expense payable by the Owners in accordance with their respective liabilities for Common Expenses after any reallocation of the allocated interests referred to in the preceding sentence. The award paid to the Association as a result of any such taking shall be disbursed by the Association as follows:

(a) If the Unit of a Condominium Unit is taken or the Limited Common Elements assigned to any one Condominium Unit are taken, the portion of such award attributable to such Unit or Limited Common Elements shall be disbursed to the Owner of such Condominium Unit or the Lienholder with respect to such Condominium Unit, as their interests may appear;

(b) If Limited Common Elements assigned to more than one Condominium Unit are taken, the portion of such award attributable to such Limited Common Elements shall be disbursed to each Owner of each such Condominium Unit or the Lienholder with respect to such Condominium Unit, as their interests may appear, in accordance with the relative liability of each Owner for Common Expenses relating to such Limited Common Elements determined as set forth in Section 8.05(a)(i) hereof; and

(c) Any portion of such award not disbursed pursuant to the provisions of Section 11.03(a) and (b) hereof shall be disbursed to the Owner of each Condominium Unit or the Lienholder with respect to such Condominium Unit, as their interests may appear, in accordance with the Sharing Ratio of such Condominium Unit after any reallocation of allocated interests referred to above in this Section 11.03.

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

12.01:Enforcement and Remedies. The provisions of the Declaration which create rights in Declarant shall be enforceable by Declarant and the other provisions of the Declaration shall be enforceable by the Association. In enforcing the Declaration,

the Association shall be entitled to utilize any of the remedies set forth in Article 8 hereof and both the Association and Declarant shall be entitled to any other remedy at law or in equity including, without limitation, an action seeking a prohibitive or mandatory injunction or damages or both. In any action for the enforcement of the Declaration, the party or parties against which or whom enforcement is sought shall pay the reasonable attorneys' fees and costs (including, without limitation, the reasonable attorneys' fees and costs of any appeal) incurred by the party enforcing the Declaration in the amount determined by the Court if the party enforcing the Declaration is the prevailing party in such action. The issuance of a building permit or certificate of occupancy which may be in contravention of the Declaration shall not prevent enforcement of the Declaration. All costs incurred by the Association in the enforcement of the Declaration shall be a Common Expense.

12.02:Duration. The Declaration shall continue and remain in full force and effect in perpetuity, as the same may be amended from time to time in accordance with the provisions of Section 12.03 hereof, unless the Declaration is terminated in accordance with the provisions of Sections 10.02 or 11.02 hereof.

12.03:Amendment. Declarant and the Association shall be entitled to amend the Declaration in those circumstances set forth in Section 217 of the Act. Except for the foregoing amendments by Declarant or the Association, the Declaration may be amended only by the recording of a written instrument or instruments specifying the amendment signed by the Owners who or which are entitled to vote at least 67 percent of the total votes of the Association and all First Lienors; provided, however, that any amendments specified in Section 217(4) of the Act shall require the unanimous consent of all Owners and all First Lienors.

12.04:Covenants Running with the Land. Each provision of the Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of the Declaration shall be deemed a covenant running with the land as a burden with and upon the title to each parcel of real property within the Project for the benefit of any other real property within the Project.

12.05:Limited Liability. A director or an officer of the Association shall not be liable for actions taken or omissions made in the performance of his or her duties except for wanton and willful acts and except for acts specified in Section 7-24-111 of Colorado Revised Statutes. Neither Declarant nor any officer, director, agent or employee of Declarant, shall be liable to any party for any action or for any failure to act

with respect to any matter arising in connection with this Declaration if the action taken or failure to act was in good faith and without malice.

12.06:Successors and Assigns. Except as otherwise provided herein, the Declaration shall be binding upon and shall inure to the benefit of Declarant and each subsequent Owner and their respective heirs, devisees, personal representatives, successors and assigns. Declarant and each subsequent Owner shall be fully discharged and relieved of liability with respect to the obligations of such party under this Declaration upon ceasing to own an interest in a Condominium Unit and upon the payment of all sums and the performance of all other obligations of such party under this Declaration up to the time such party ceased to own an interest in a Condominium Unit.

12.07:Transfer by Declarant. Any and all rights, powers or reservations of Declarant herein contained may be transferred by Declarant to any person or entity who or which will assume any or all of the duties of Declarant related to the rights, powers or reservations assigned. Upon the recording of a document in the real property records of Eagle County, Colorado executed by Declarant and the transferee by which Declarant transfers any of such rights, powers or reservations and the assignee assumes all of the duties of Declarant related to the rights, powers or reservations assigned, the transferee shall have the same rights and powers and be subject to the same obligations and duties with respect to the rights, powers or reservations assigned as are given to and assumed by the Declarant herein and Declarant shall be relieved from all liabilities, obligations and duties hereunder which are assumed by the assignee subject, however, to the provisions of Section 304 of the Act. The provisions of Section 304 of the Act shall apply to any transfer of the rights, powers or reservations of Declarant herein upon the transfer of title to any Condominium Unit owned by Declarant or any portion of the Property pursuant to the foreclosure of any Security Interest encumbering any Condominium Unit owned by Declarant or encumbering any portion of the Property as of the date of recording of this instrument, or any extensions, renewals or modifications thereof, or pursuant to any procedure in lieu of such foreclosure.

12.08:Notices to Owners and Association. Each Owner shall register such Owner's mailing address with the Association, and except for statements of assessments, notices of Association meetings, other routine notices and notices which may be sent in another manner in accordance with the provisions of the Declaration or the Act, all notices or demands intended to be served upon an Owner shall be sent by



either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If an Owner fails to register such Owner's mailing address with the Association, such Owner's mailing address shall be deemed to be the address of such Owner's Condominium Unit. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws.

12.09(a). *{Intentionally Omitted}*.

12.10:Severability. Invalidity or unenforceability of any provision of the Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of the Declaration.

12.11:Captions. The captions and headings in the Declaration are for convenience only and shall not be considered in construing any provisions of the Declaration.

12.12:Construction. When necessary for proper construction, the masculine of any word used in the Declaration shall include the feminine or neutered gender, and the singular the plural and vice versa.

12.13:No Waiver. Failure to enforce any provisions of the Declaration shall not operate as a waiver of such provision or of any other provision of the Declaration.

12.14:Governing Law. The Declaration shall be governed by and construed under Colorado law.

**EXECUTED** as of the date first set forth above.

**AIRPARK 550, LLC,**  
**a Colorado limited liability company**

By: *J. David Trotter*  
J. David Trotter, Manager

STATE OF Texas }  
                                      }ss:  
COUNTY OF Travis }

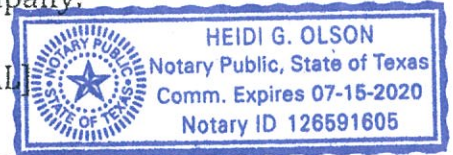
The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of December, 2016, by J. David Trotter, as Manager of Airpark 550, LLC, a Colorado limited liability company, on behalf of such limited liability company.

Witness my hand and official seal.

My commission expires: 7/15/2020

*H. G. Olson*  
Notary Public

[SEAL]



**EXHIBIT A**

(Attached to and forming a part of Condominium Declaration for Airpark 550 Condominiums)

**LEGAL DESCRIPTION OF THE PROPERTY**

Lot 27, Valley Airpark, Filing No. 3, according to the Plat recorded March 12, 2003, at Reception No. 826410, County of Eagle, State of Colorado

**EXHIBIT B**

(Attached to and forming a part of Condominium Declaration for Airpark 550 Condominiums)

**IDENTIFYING NUMBERS OF AND ALLOCATION  
OF UNDIVIDED INTERESTS IN COMMON  
ELEMENTS TO CONDOMINIUM UNITS**

<u>Identifying Number of Each Condominium Unit</u>	<u>Percentage Interest of Common Elements Allocated to Each Condominium Unit</u>
Unit 1	8.33
Unit 2	8.33
Unit 3	8.33
Unit 4	8.33
Unit 5	8.33
Unit 6	8.33
Unit 7	8.33
Unit 8	8.33
Unit 9	8.34
Unit 10	8.34
Unit 11	8.34
Unit 12	8.34
	=====
	<b>100</b>

**EXHIBIT C**

(Attached to and forming a part of Condominium Declaration for Airpark 550 Condominiums)

Parcel B, Final Plat and Condominium Map, a replat of Lot 27, Valley Airpark, Filing No. 3, recorded \_\_\_\_\_, 20\_\_\_\_, at Reception No. \_\_\_\_\_, County of Eagle, State of Colorado.