

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CHAMONIX VAIL COMMUNITY**

<u>Name of Common Interest Community:</u>	CHAMONIX VAIL COMMUNITY
<u>Type of Common Interest Community:</u>	PLANNED COMMUNITY
<u>Name of the Association:</u>	CHAMONIX VAIL OWNERS ASSOCIATION, INC.
<u>Person Executing the Declaration:</u>	TOWN OF VAIL

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TABLE OF CONTENTS

ARTICLE 1	DEFINITIONS	1
1.1	AGENCIES	1
1.2	ALLOCATED INTERESTS	1
1.3	ARTICLES.....	2
1.4	ASSESSMENT.....	2
1.5	ASSOCIATION.....	2
1.6	BOARD OF DIRECTORS.....	2
1.7	BYLAWS	2
1.8	CCIOA.....	2
1.9	CLERK AND RECORDER.....	2
1.10	COMMON ELEMENTS.....	2
1.11	COMMON EXPENSES	3
1.12	COMMUNITY.....	3
1.13	CONTRACTOR.....	3
1.14	COUNTY	3
1.15	DECLARANT.....	3
1.16	DECLARATION.....	3
1.17	DESIGN REVIEW COMMITTEE.....	3
1.18	DEVELOPER	3
1.19	DEVELOPMENT RIGHTS.....	3
1.20	GENERAL COMMON ELEMENTS	4
1.21	GENERAL COMMON EXPENSES.....	4
1.21	GOVERNING DOCUMENTS	4
1.23	IMPROVEMENTS	4
1.24	INCLUDE OR INCLUDING.....	4
1.25	LIMITED COMMON ELEMENTS	5
1.26	LIMITED COMMON EXPENSES	5
1.27	MAP.....	5
1.28	MEMBER	5
1.29	NONPROFIT ACT.....	5
1.30	OWNER.....	5
1.31	OWNER MAINTENANCE MANUAL	5
1.32	PERIOD OF DECLARANT CONTROL.....	5
1.33	PERMITTEES.....	5
1.34	PERSON	5
1.35	POLICIES.....	6
1.36	PROJECT	6
1.37	PROJECT MAINTENANCE MANUAL	6
1.38	REPAIR WORK.....	6
1.39	RESIDENCE	6
1.40	RULES	6
1.41	SECURITY INTEREST	6
1.42	SECURITY INTEREST HOLDER	6

1.43	SPECIAL DECLARANT RIGHTS	7
1.44	SUPPLEMENTAL DECLARATION.....	7
1.45	TOWN.....	7
1.46	UNIT.....	7
1.47	UNITS THAT MAY BE INCLUDED.....	7
1.48	UNOCCUPIED UNITS.....	7
ARTICLE 2 MEMBERSHIP AND VOTING RIGHTS.....		8
2.1	MEMBERSHIP	8
2.2	VOTING RIGHTS.....	8
ARTICLE 3 ASSOCIATION.....		8
3.1	ASSOCIATION.....	8
3.2	BOARD OF DIRECTORS.....	8
3.3	AUTHORITY OF THE BOARD OF DIRECTORS	10
3.4	ELECTION OF PART OF THE BOARD OF DIRECTORS DURING THE PERIOD OF DECLARANT CONTROL.....	10
3.5	AUTHORITY OF DECLARANT DURING THE PERIOD OF DECLARANT CONTROL.....	10
3.6	TERMINATION OF PERIOD OF DECLARANT CONTROL.....	10
3.7	BUDGET AND REVIEW OR AUDIT	11
3.8	ASSOCIATION BOOKS AND RECORDS	11
3.9	INFORMATION REGARDING SECURITY INTERESTS ON UNITS	12
3.10	RULES AND REGULATIONS AND POLICIES AND PROCEDURES.....	12
3.11	COOPERATION WITH OTHER COMMUNITY ASSOCIATIONS AND/OR ANY DISTRICTS	12
3.12	MANAGEMENT AGREEMENTS AND OTHER CONTRACTS	13
3.13	MERGER	13
3.14	COMPLIANCE WITH MAINTENANCE MANUALS	13
3.15	NOTICE OF MEETINGS AND OTHER MATTERS OF THE ASSOCIATION	13
3.16	SUBMISSION OF MATTERS TO OWNERS	14
ARTICLE 4 ASSESSMENTS.....		14
4.1	PERSONAL OBLIGATION FOR ASSESSMENTS	14
4.2	PURPOSE OF ASSESSMENTS	14
4.3	ALLOCATION OF COMMON EXPENSES	14
4.4	RATE OF ANNUAL AND SPECIAL ASSESSMENTS.....	15
4.5	DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS	15
4.6	SPECIAL ASSESSMENTS	16
4.7	NOTICE AND QUORUM FOR ANY SPECIAL ASSESSMENTS.....	16
4.8	ASSESSMENTS/CHARGES FOR SERVICES TO LESS THAN ALL UNITS IN THE COMMUNITY.....	16
4.9	LIEN FOR ASSESSMENTS.....	16
4.10	PRIORITY OF ASSOCIATION LIEN	17
4.11	CERTIFICATE OF STATUS OF ASSESSMENTS	17
4.12	APPLICATION OF PAYMENTS TO THE ASSOCIATION	18
4.13	EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.....	18
4.14	SURPLUS FUNDS	18
4.15	WORKING CAPITAL FUND.....	18
4.16	OTHER CHARGES	18
4.17	CHARGES FOR MISCONDUCT	19

ARTICLE 5	DESIGN REVIEW	19
5.1	BOARD OF DIRECTORS, DESIGN REVIEW COMMITTEE	19
5.2	REVIEW AND APPROVAL BY BOARD; REIMBURSEMENT FOR EXPENSES; REQUIREMENT FOR APPROVAL BY GOVERNMENTAL ENTITIES	19
5.3	DELEGATION (AND ACCEPTANCE) OF DESIGN REVIEW AND APPROVAL	20
5.4	PROCEDURES	20
5.5	VOTE AND APPEAL	20
5.6	PROSECUTION OF WORK AFTER APPROVAL	20
5.7	INSPECTION OF WORK	21
5.8	STANDARDS/GUIDELINES	21
5.9	VARIANCE	21
5.10	WAIVERS; NO PRECEDENT	21
5.11	RECORDS	22
5.12	LIABILITY	22
5.13	DECLARANT'S EXEMPTION	22
ARTICLE 6	INSURANCE	22
6.1	INSURANCE	22
6.2	INSURANCE ON THE STRUCTURES ON UNITS	22
6.3	GENERAL PROVISIONS OF INSURANCE POLICIES	23
6.4	DEDUCTIBLES	23
6.5	PAYMENT OF INSURANCE PROCEEDS	23
6.6	ASSOCIATION INSURANCE AS PRIMARY COVERAGE	24
6.7	ACCEPTABLE INSURANCE COMPANIES	24
6.8	INSURANCE TO BE MAINTAINED BY OWNERS	24
ARTICLE 7	PARTY WALLS	24
7.1	DEFINITION	24
7.2	GENERAL RULES OF LAW TO APPLY	25
7.3	SHARING OF REPAIR AND MAINTENANCE	25
7.4	DESTRUCTION BY FIRE OR OTHER CASUALTY	25
7.5	REPAIR TO MONOLITHIC SLABS AND MONOLITHIC FOUNDATIONS	25
7.6	WEATHERPROOFING	25
7.7	RIGHT TO CONTRIBUTION RUNS WITH LAND	25
7.8	RIGHTS OF OWNERS	25
7.9	ARBITRATION	26
ARTICLE 8	DAMAGE OR DESTRUCTION	26
8.1	DAMAGE OR DESTRUCTION	26
8.2	UNITS	26
ARTICLE 9	MAINTENANCE	27
9.1	GENERAL	27
9.2	CHANGED OR ADDED IMPROVEMENTS	28
9.3	ASSOCIATION'S RIGHT TO MAINTAIN, REPAIR AND RECONSTRUCT	28
9.4	NON-INTERFERENCE WITH GRADE AND DRAINAGE	28
9.5	DECLARANT/DEVELOPER/CONTRACTOR INSPECTIONS	29
9.6	ACTS OR OMISSIONS	29
ARTICLE 10	EASEMENTS	30
10.1	OTHER EASEMENTS	30

10.2	ACCESS EASEMENT FOR REPAIRS	30
10.3	ACCESS EASEMENT	30
10.4	UTILITIES EASEMENT	30
10.5	DRAINAGE EASEMENT	31
10.6	ENCROACHMENT EASEMENTS	31
10.7	ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.....	31
10.8	ADDITIONAL EASEMENTS.....	32
ARTICLE 11 RESTRICTIONS.....		33
11.1	GENERAL PLAN	33
11.2	RESTRICTIONS IMPOSED	33
11.3	CHAMONIX VAIL DEED RESTRICTION.....	33
11.4	RESIDENTIAL USE; PROFESSIONAL OR HOME OCCUPATION	33
11.5	HOUSEHOLD PETS.....	33
11.6	TEMPORARY STRUCTURES; UNSIGHTLY CONDITIONS	34
11.7	MISCELLANEOUS IMPROVEMENTS	34
11.8	VEHICULAR PARKING, STORAGE AND REPAIRS	35
11.9	COMPLIANCE WITH LAWS.....	36
11.10	COMPLIANCE WITH GOVERNING DOCUMENTS	36
11.11	PROPERTY TO BE MAINTAINED	36
11.12	NO NUISANCES, OFFENSIVE, HAZARDOUS, OR ANNOYING ACTIVITIES	37
11.13	NO ANNOYING LIGHTS, SOUNDS OR ODORS	37
11.14	RESTRICTIONS ON TRASH AND MATERIALS	37
11.15	UTILITY SYSTEMS	37
11.16	LEASES.....	38
11.17	RESTRICTIONS ON MINING OR DRILLING	38
11.18	DECLARANT'S USE.....	38
11.19	USE OF COMMON ELEMENTS.....	38
ARTICLE 12 RIGHTS IN THE COMMON ELEMENTS.....		38
12.1	OWNERS' EASEMENTS OF ENJOYMENT	38
12.2	EXTENT OF OWNERS' EASEMENTS.....	38
12.3	LIMITED COMMON ELEMENTS	40
12.4	GENERAL COMMON ELEMENTS	40
12.5	DECLARANT USE OF COMMON ELEMENTS.....	41
12.6	PAYMENT OF TAXES OR INSURANCE BY SECURITY INTEREST HOLDERS.....	41
12.7	CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.....	41
12.8	DESIGNATION OF COMMON ELEMENTS	41
12.9	DUTY TO ACCEPT PROPERTY AND FACILITIES TRANSFERRED BY DECLARANT.....	41
ARTICLE 13 DISPUTE RESOLUTION.....		42
13.1	REGULATORY DISPUTES.....	42
13.2	OTHER DISPUTES BETWEEN PARTIES	42
13.2.1	Mediation.....	42
13.2.2	Arbitration.....	43
13.2.3	Arbitrator	44
13.3	INITIATION OF LITIGATION BY THE ASSOCIATION.....	44
13.4	CONSENSUS FOR ASSOCIATION ACTION.....	44
13.5	LIABILITY FOR FAILURE TO MAINTAIN AN ACTION AGAINST DECLARANT, DEVELOPER OR CONTRACTOR.....	45

13.6	BINDING EFFECT	45
13.7	UTILIZATION OF FUNDS RESULTING FROM THE CLAIM	45
13.8	EXCLUSIVE REMEDY.....	45
13.9	AMENDMENT	45
13.10	VESTED RIGHTS OF PARTY	45
ARTICLE 14 GENERAL PROVISIONS		46
14.1	SEVERABILITY.....	46
14.2	CONFLICT OF PROVISIONS	46
14.3	CONFLICT WITH THE ACT	46
14.4	ANNEXATION; WITHDRAWAL	46
14.5	SUBDIVISION OR REPLATTING OF UNITS.....	47
14.6	DECLARANT'S USE.....	47
14.7	DURATION, REVOCATION, AND AMENDMENT.....	48
14.8	REGISTRATION OF MAILING ADDRESS.....	48
14.9	HUD OR VA APPROVAL	49
14.10	EMINENT DOMAIN	49
14.11	INDEMNIFICATION	49
14.12	NO WAIVER OF GOVERNMENTAL IMMUNITY.....	49
14.13	LIMITATION ON LIABILITY	49
14.14	NO REPRESENTATIONS, GUARANTIES OR WARRANTIES	50
14.15	DISCLAIMER REGARDING SAFETY	50
14.16	WAIVER	50
14.17	HEADINGS.....	50
14.18	GENDER	50
14.19	RUN WITH LAND; BINDING UPON SUCCESSORS.....	50

- Exhibit A – Community
- Exhibit A-1 – Property Subject to Withdrawal
- Exhibit B - Assessments
- Exhibit C –Certain Title Exceptions

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF**

CHAMONIX VAIL COMMUNITY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CHAMONIX VAIL COMMUNITY (this "*Declaration*") is made and entered into by the TOWN OF VAIL, a Colorado home rule municipality ("*Declarant*").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property situated in the Town of Vail, County of Eagle, State of Colorado, which is described on **Exhibit A**, attached hereto and incorporated herein by this reference (the "*Property*"); and

WHEREAS, Declarant desires to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein; and

WHEREAS, a common interest community may be created pursuant to CCIOA (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the common interest community is recorded.

NOW, THEREFORE, Declarant hereby declares that the Map of the Property is being recorded simultaneously herewith and that all of the Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the above-described property and be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1
DEFINITIONS**

1.1. "AGENCIES" collectively means the agencies, corporations and entities that purchase, insure or guarantee residential mortgages, including the United States Housing and Urban Development (HUD), the United States Department of Veterans Affairs (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and the Colorado Housing and Finance Authority.

1.2. "ALLOCATED INTERESTS" mean the number of votes in the Association, and the percentage of Assessments for Common Expense that are allocated to each of the Units within the Community. The formulas used to establish the Allocated Interests are as follows:

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(a) Each Unit is entitled to one vote.

(b) The percentage share of Assessments for General Common Expenses for each Unit is based on a fraction, the numerator of which is the square footage of the Improvements within such Unit and the denominator of which is the total square footage of all Improvements within all Units in the Community. The initial percentage share of Assessments for General Common Expenses for each Unit is set forth on **Exhibit B** attached hereto. The square footage of each Unit will be as reasonably determined by the Declarant.

(c) The percentage share of Assessments for a Limited Common Expense is also based on a fraction, the numerator of which is the square footage of such Unit and the denominator of which is the total square footage of all Units that have the right to use the Limited Common Element to which such Limited Common Expense pertains.

1.3. "ARTICLES" means the Articles of Incorporation for **CHAMONIX VAIL OWNERS ASSOCIATION, INC.**, a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

1.4. "ASSESSMENT" means annual Assessments and special Assessments, which are provided for and described in this Declaration. For purposes of Article 4 of this Declaration, "*Assessment*" means annual Assessments, special Assessments, and late charges, fines, fees, interest, costs, expenses, reasonable attorneys' fees, and any other charges that are provided for in this Declaration.

1.5. "ASSOCIATION" means **CHAMONIX VAIL OWNERS ASSOCIATION, INC.**, a Colorado non profit corporation, its successors and assigns, a community association as provided in CCIOA.

1.6. "BOARD OF DIRECTORS" or "BOARD" means the body, regardless of name, designated in this Declaration, the Articles and the Bylaws of the Association to act on behalf of the Association. The Board may appoint one or more committees as it deems appropriate, from time to time, in carrying out any of its purposes. Each committee serves at the pleasure of the Board, has only such authority as may be given to it by the Board from time to time, and serves only in an advisory capacity to the Board; all actions and writings of each such committee are subject to review and approval by the Board.

1.7. "BYLAWS" means the Bylaws adopted by the Association, as amended from time to time.

1.8. "CCIOA" means the Colorado Common Interest Ownership Act, as set forth in Colorado Revised Statutes §§ 38-33.3-101, et seq., as the same may be amended from time to time. In the event that CCIOA is repealed, CCIOA as it exists on the date this Declaration is recorded shall remain applicable.

1.9. "CLERK AND RECORDER" means the office of the Clerk and Recorder in the County.

1.10. "COMMON ELEMENTS" means any real property (including Improvements located thereon) and fixtures owned, used pursuant to Easement rights or leased by the Association, and the access rights provided under certain public access easements identified on the Map (but excluding all Units).

1.11. "COMMON EXPENSES" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves, including: (a) all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws; (b) all other expenses of owning, administering, operating, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (c) all expenses incurred for the benefit of more than one Owner; (d) insurance premiums and deductibles for the insurance carried under Article 6; and (e) all expenses lawfully determined to be Common Expenses by the Board. The Common Expenses shall consist of General Common Expenses and various types of Limited Common Expenses.

1.12. "COMMUNITY" means the real estate and Improvements described in this Declaration, as supplemented and amended from time to time. The Community is a planned community under CCIOA. The name of the Community is "*Chamonix Vail Community*".

1.13. "CONTRACTOR" means that company, or those companies, engaged to construct the Residences on the Units as general contractor or construction manager.

1.14. "COUNTY" means the County of Eagle, State of Colorado.

1.15. "DECLARANT" means Town of Vail, a Colorado home rule municipality, and any other Person(s) to whom Declarant, by recorded document, expressly assigns one or more of Declarant's rights under this Declaration (which shall be the extent of Declarant's rights to which such assignee succeeds).

1.16. "DECLARATION" means this Declaration of Covenants, Conditions and Restrictions of Chamonix Vail Community and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including plats and maps.

1.17. "DESIGN REVIEW COMMITTEE" means the committee appointed by the Association, which Committee shall review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

1.18. "DEVELOPER" means that company, or those companies, engaged by Declarant to manage the development and construction of the Residences on the Units as developer, including Triumph Development West, LLC, a Delaware limited liability company.

1.19. "DEVELOPMENT RIGHTS" means the following rights or combination of rights reserved by Declarant, as provided in this Declaration:

- 1.19.1. build and complete Improvements in the Community;
- 1.19.2. add real estate to this Community;
- 1.19.3. create Units and/or Common Elements;
- 1.19.4. subdivide or replat Units; and
- 1.19.5. withdraw real estate from this Community as described in Section 14.4.3 below.

Declarant may exercise its Development Rights in all or any portion of the Community, and no assurances are made as to the boundaries or order of exercise of any Development Rights. Declarant may also assign one or more Development Rights to an Owner of a Unit through a Supplemental Declaration executed by Declarant. Except for Declarant's right to withdraw real estate as described in Section 14.4.3 below, Declarant's rights to exercise all other Development Rights shall terminate automatically as provided in Section 1.43 of this Declaration.

1.20. "GENERAL COMMON ELEMENTS" means all tangible physical properties of this Project, other than Limited Common Elements and the Units. The General Common Elements include (a) land and landscaping within the Project not otherwise designated on the Map or in this Declaration as part of a Unit or a Limited Common Element, (b) all easements and off-site entitlements included with or running for the benefit of the Property (whether in title or by contract), (c) all alley and perimeter sidewalks located on the Property (or any portion thereof) adjacent to any public street, if any, (d) management offices, engineering office and group facilities, if any, not otherwise designated on the Map or in this Declaration as a Limited Common Element, (e) driveways and lanes to Units and parking spaces, unless otherwise allocated on the Map or in this Declaration as a Limited Common Element, (f) all gates and walkways to the Units, unless otherwise identified on the Map as Limited Common Elements, (g) all monument or directional signage, if any, mail boxes and stands, irrigation systems for the Project, and all exterior lighting located within the Project not otherwise designated on the Map or in this Declaration as a Limited Common Element, (h) those items identified on the Map as "GCE" or General Common Elements, and (i) those parts of the Project necessary in common use or convenient to its existence, maintenance and safety.

1.21. "GENERAL COMMON EXPENSES" are all Common Expenses incurred in connection with the ownership, administration, operation, management and Repair Work for the General Common Elements.

1.22. "GOVERNING DOCUMENTS" means this Declaration, the Articles, the Bylaws, the Policies, the Map, as amended, any design or architectural guidelines of the Design Review Committee or Association and any rules and regulations, policies and procedures, or design guidelines of the Design Review Committee or the Association.

1.23. "IMPROVEMENTS" means all improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features. The foregoing shall include buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, driveways, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, basketball backboards and hoops, whether fixed or movable, signs, exterior tanks, utilities facilities, pipes, lines, and exterior air conditioning, cooling, heating and water softening equipment, if any. For purposes of Article 5 of this Declaration and only in such Article, the word "exterior" shall be inserted immediately preceding the fourth word "improvements" in the first sentence of this Section.

1.24. "INCLUDE" or "INCLUDING" means including without limitation or including, but not limited to.

1.25. "LIMITED COMMON ELEMENTS" means those parts of the Common Elements that are either limited to or reserved in this Declaration, so designated on the Map as "LCE", in a recorded Supplemental Map or Declaration executed by Declarant or by action of the Association, for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all Owners, including those elements identified in Section 12.3.

1.26. "LIMITED COMMON EXPENSES" are those Common Expenses identified as such in this Declaration and those Common Expenses that are incurred in connection with the ownership, administration, operation, management, and Repair Work for the Limited Common Elements.

1.27. "MAP" means the community map of the Project recorded with the Clerk and Recorder, depicting a plan of all or a part of the Property subject to this Declaration and any supplements and amendments thereto. The Map and any supplements thereto are hereby incorporated herein by reference as if set forth in their entireties.

1.28. "MEMBER" means all Owners of a Unit collectively or, following termination of the Community, of all former Owners entitled to distributions of proceeds under CCIOA or their heirs, personal representatives, successors or assigns.

1.29. "NONPROFIT ACT" means the Colorado Revised Nonprofit Corporation Act, as set forth in Colorado Revised Statutes §§ 7-121-101 et seq., as the same may be amended from time to time.

1.30. "OWNER" means each fee simple title holder of a Unit, including 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. There may be more than one Owner of a Unit.

1.31. "OWNER MAINTENANCE MANUAL" means and refers to that information package provided to each Owner in connection with the first acquisition of each Unit and the Improvements located on such Unit and to the Association by Declarant, Developer or Contractor entitled "Chamonix Vail Owner Maintenance Manual" dated _____, 2017, as amended from time to time by Declarant, Developer or Contractor.

1.32. "PERIOD OF DECLARANT CONTROL" means a length of time expiring ten (10) years after initial recording of this Declaration in the office of the Clerk and Recorder. However, the Period of Declarant Control shall terminate earlier upon the first of the following events to occur, if any of the following occur within the time period that is specified in the first sentence of this Section: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Units that May Be Included to Owners other than a Declarant; (b) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business; or (c) two (2) years after any right to add new Units to the Declaration was last exercised.

1.33. "PERMITTEES" means and includes an Owner's family members, tenants, sub-tenants, contractors, subcontractors, agents, employees, licensees, lessees, sublessees, guests and invitees (including invitees and guests of lessees and sublessees) and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers and visitors.

1.34. "PERSON" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

1.35. “POLICIES” means the responsible governance policies of the Association adopted by the Board as required by CCIOA.

1.36. “PROJECT” means the common interest community created by this Declaration and as shown on the Map consisting of the Property, the Units, and the Common Elements.

1.37. “PROJECT MAINTENANCE MANUAL” means and refers to that information package provided to the Association by the Contractor, Developer or Declarant entitled “Chamonix Vail Project Maintenance Manual” dated _____, 2017, as amended from time to time by Contractor, Developer or Declarant.

1.38. “REPAIR WORK” shall mean all maintenance, repair, and replacement work, including reasonable costs of plans and specifications, inspections, supervision and other related costs. All Repair Work performed by the Association shall be performed as specified in the Project Maintenance Manual or, if not addressed in the Project Maintenance Manual, as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. All Repair Work performed by an Owner shall be performed as specified in the Owner Maintenance Manual or, if not addressed in the Owner Maintenance Manual, as is appropriate to maintain the functionality and prolong the life of the Improvement in question and include taking all other actions necessary to maintain the Improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition.

1.39. “RESIDENCE” shall mean those Improvements constructed within a Unit as a residential dwelling unit.

1.40. “RULES” means the rules and regulations of the Association that govern the use of the Units, Common Elements and any property owned or managed by the Association, as amended from time to time by the Board.

1.41. “SECURITY INTEREST” means an interest in real estate or personal property (including in one or more Units), created by contract or conveyance, which secures payment or performance of any 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 leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation. For purposes of Section 4.10 of this Declaration and, with respect to notice of cancellation or substantial modification of certain insurance policies, to Section 6.3 of this Declaration, “*Security Interest*” shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller, whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the Administrator and is owned by the Administrator’s assignee, or a remote assignee, and the land records in the County in which such property is located show the Administrator as having the record title to the Unit.

1.42. “SECURITY INTEREST HOLDER” means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest (including, for purposes of Section 4.10 of this Declaration and, with respect to notice of cancellation or substantial modification of certain

insurance policies, to Section 6.3, the Administrator of Veterans Affairs, an Officer of the United States of America, and his assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether such contract is recorded or not and the land records of the County in which such property is located, show the said Administrator as having the record title to the Unit), or any successor to the interest of any such Person under such Security Interest.

1.43. "SPECIAL DECLARANT RIGHTS" means the following rights, which rights are hereby reserved for the benefit of Declarant, and which rights may be further described in this Declaration: to build and complete Improvements in the Community; to exercise any Development Right; to maintain sales offices, construction offices, management offices, model homes and signs advertising the Community and sale of Units; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate that may be added to the Community; to make the Community subject to a master association; to merge or consolidate a common interest community of the same form of ownership; or to appoint or remove any officer of the Association or any Board of Directors member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Except for Declarant's right to withdraw real property from the Community as set forth in Section 14.4.3, Special Declarant Rights shall terminate automatically at such time as Declarant no longer owns any portion of the property described on the attached **Exhibit A**.

1.44. "SUPPLEMENTAL DECLARATION" means a written instrument containing covenants, conditions, restrictions or equitable servitudes, or any combination thereof, that may hereafter be recorded on any portion of the Community and/or any real property that is (or has been) annexed to this Declaration.

1.45. "TOWN" means the Town of Vail, State of Colorado.

1.46. "UNIT" means each platted lot included in the real property described on the attached **Exhibit A**, as the same may be subdivided or replatted from time to time (and "Unit" shall include all lots created as a result of such subdivision or replatting), or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements (which may include one or more platted lots) and any publicly dedicated property. Each Unit shall constitute a "unit" under CCIOA, and it shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Unit. Each Unit shall be depicted on the Map.

1.47. "UNITS THAT MAY BE INCLUDED" means thirty-two (32) Units, which shall be the maximum number of Units that may be subject to this Declaration. However, the aforesaid number of Units that May Be Included is not a representation or a guarantee as to the actual number of Units that will ultimately be included in or constructed as part of the Community.

1.48. "UNOCCUPIED UNITS" means and includes those Units that do not have completed Improvements. For purposes of this definition, Improvements within a Unit are deemed completed when the Town or County (or other applicable governing authority) has issued a certificate of occupancy for the Improvements located on or within such Unit.

**ARTICLE 2
MEMBERSHIP AND VOTING RIGHTS**

2.1. MEMBERSHIP. The Association shall have one class of membership. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Each Unit shall have one membership and there is only one Member per Unit, even if multiple Owners own the Unit.

2.2. VOTING RIGHTS. Each Member shall be entitled to one vote for each Unit owned, except that no votes allocated to a Unit owned by the Association may be cast. The total number of votes that may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association.

**ARTICLE 3
ASSOCIATION**

3.1. ASSOCIATION. The Association has been or will be formed as a Colorado non-profit corporation under the Nonprofit Act. The Association shall perform functions and hold title to and manage the Common Elements and personal property as provided in this Declaration, the Articles and the Bylaws for the Association. It shall have all powers necessary or desirable to effectuate such purposes, including the right to (a) operate, regulate, manage, maintain, alter, repair, replace, and charge fees in connection with the operation and use of the Common Elements; (b) enforce all provisions of this Declaration; and (c) perform all rights and obligations granted to the Association under the Governing Documents. The administration and management of the Common Elements shall be governed by the Governing Documents.

3.2. BOARD OF DIRECTORS. The affairs of the Association shall be managed by a Board of Directors. The Board of Directors shall consist of three persons. Subject to Section 3.4 hereof, the Board of Directors shall be elected by the Members. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Except for those matters expressly reserved to the Members as provided in the Governing Documents and the Nonprofit Act, the Board may act in all instances on behalf of the Association, to:

- (a) Adopt and amend bylaws, rules and policies;
- (b) Determine common expenses and adopt and amend the Budget for revenues, expenditures and reserves;
- (c) Collect Assessments;
- (d) Accept title to and/or agree to maintain Improvements within the Project funded, constructed, installed and/or maintained by Declarant;

(e) Agree to maintain or otherwise contract for the maintenance of parking spaces, sidewalks and/or landscaping areas within any particular Unit (other than Common Elements, which shall be maintained by the Association) at such Unit Owner's election and expense;

(f) Hire and terminate managing agents and other employees, agents and independent contractors;

(g) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;

(h) Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or contracts providing for services to the Association by Declarant shall be subject to the limitations described in below;

(i) Regulate the use, maintenance, repair, replacement and modification of Common Elements;

(j) Cause additional Improvements to be made as a part of the Common Elements;

(k) Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, subject to restrictions imposed by this Declaration or the Act,

(l) Subject to compliance with the Owner consent requirements imposed under Section 312 of the Act, dedicate, grant and convey any Common Element as public right-of-way to the Town or the County, in which event effective upon recording of such dedication and conveyance the public right-of-way so conveyed will be removed from the Project and thereafter no longer subject to the terms and conditions of this Declaration;

(m) Grant easements, leases, licenses and concessions through or over the Common Elements;

(n) Impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements (other than those Limited Common Elements described in Sections 202(1)(b) and (d) of the Act), provided that no fee, charge or payment may be assessed against any Owner or, absent such Owner's approval, its Permittees;

(o) Enforce any rules or policies adopted by the Board, including enforcement by levying and collecting charges or fines for the violation thereof;

(p) Impose charges (including late charges and default interest) for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Governing Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within 30 days after they become due);

(q) Impose reasonable charges for the preparation and recordation of amendments to this Declaration, the Map or statements of unpaid Assessments;

(r) Provide for the indemnification of its officers and members of the Board to the extent permitted by applicable law and maintain directors' and officers' liability insurance;

(s) Assign its right to future income, including the right to receive Assessments; provided, however, that such Board action shall be effective only with the consent of Owners holding sixty-seven percent (67%) of the Association votes;

(t) Exercise any other powers conferred by this Declaration or the Association Bylaws;

(u) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including those powers specified by the Nonprofit Act; and

(v) Exercise any other powers necessary and proper for the governance and operation of the Association.

3.3. AUTHORITY OF THE BOARD OF DIRECTORS. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent or employee, without a vote of the Members, except as otherwise specifically provided in this Declaration, the Articles or Bylaws of the Association.

3.4. ELECTION OF PART OF THE BOARD OF DIRECTORS DURING THE PERIOD OF DECLARANT CONTROL. During the Period of Declarant Control, no later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that May Be Included to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors must be elected by Members other than Declarant, provided that Declarant reserves the right to appoint a majority of the Board. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that May Be Included to Owners other than a Declarant, not less than thirty-three and one-third percent (33 1/3%) of the directors must be elected by the Members other than Declarant, provided that Declarant reserves the right to appoint a majority of the Board.

3.5. AUTHORITY OF DECLARANT DURING THE PERIOD OF DECLARANT CONTROL. Except as otherwise provided in this Article, during the Period of Declarant Control, Declarant or Persons appointed by Declarant may appoint all officers and directors of the Association, and may remove all officers and directors which have been appointed by Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and directors of the Association before termination of the Period of Declarant Control; but, in that event, Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

3.6. TERMINATION OF PERIOD OF DECLARANT CONTROL. After termination of the Period of Declarant Control, the Members shall elect a Board of Directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. The Board of Directors shall elect the officers. After the Members other than Declarant elect a majority of the

Executive Board, Declarant shall deliver to the Association all Common Elements and property of the Owners and of the Association held by or controlled by Declarant, if and to the extent required by the Act.

3.7. BUDGET AND REVIEW OR AUDIT.

3.7.1. Within ninety (90) days after adoption of any proposed budget for the Community, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Association budget to all the Members and shall set a date for a meeting of the Members to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary. The Board of Directors shall give notice to the Owners of the meeting as provided in the Bylaws of the Association. The budget proposed by the Board of Directors does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by eighty percent (80%) of the votes in the Association, whether or not a quorum is present. In the event that the proposed budget is vetoed, the periodic budget last approved by the Board of Directors and not vetoed by the Owners must be continued until such time as a subsequent budget proposed by the Board of Directors is not vetoed by the Owners.

3.7.2. The Association's books and records shall be subject to an audit, using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two years by a Person select by the Board of Directors. Such Person need not be a certified public accountant except in the case of an audit.

3.7.2.1. An audit shall be required only when both of the following conditions are met:

(i) The Association has annual revenues or expenditures of a least two hundred fifty thousand dollars (\$250,000.00); and

(ii) An audit is requested by Owners holding of at least one-third (1/3) of the votes in the Association.

3.7.2.2. Copies of an audit or review under this subsection 3.7.2 shall be made available upon request to an Owner beginning not later than thirty (30) days after its completion.

3.8. ASSOCIATION BOOKS AND RECORDS.

3.8.1. The Association's books and records shall be subject to an audit or a review as provided in this Declaration. Subject to the fourth sentence of this Section, the Association shall make available for inspection and copying by Owners, Security Interest Holders, and insurers or guarantors of any such Security Interest, current copies of this Declaration, and the Articles, Bylaws, Policies, rules and regulations, other applicable design guidelines, minutes of the most recent annual Association's meeting and of any Board meetings that occurred within the most recent six (6) months prior to such request, Association operating budget for the year in which

such request is made, Association's annual income and expenditures statement, and Association's annual balance sheet. The Person(s) accessing and/or copying such documents shall pay all costs associated therewith. However, the Board of Directors may, at any time(s), prior or subsequent to a request for inspection and/or copying, determine that items are confidential and should not be made available. "*Reasonably Available*" shall mean available during normal business hours, upon prior notice of at least five (5) business days.

3.8.2. In the event CCIOA is amended to remove, modify, or otherwise revise the requirements under Section 3.8 of this Declaration, Section 3.8 shall be deemed amended to require that which is required pursuant to CCIOA, as amended.

3.9. INFORMATION REGARDING SECURITY INTERESTS ON UNITS. Each Member shall, within twenty (20) days of encumbering such Member's Unit with a Security Interest, and at other times upon request of the Association, provide the Association with the name and address of such Security Interest Holder, a copy of the instrument(s) creating the Security Interest(s), and the loan number(s) (or other identifying number of such Security Interest(s)). Within twenty (20) days after any change in the name or address of a Security Interest Holder on a Member's Unit, and at other times upon request of the Association, such Member shall provide the aforesaid information to the Association with respect to each Security Interest held by such Security Interest Holder.

3.10. RULES AND REGULATIONS AND POLICIES AND PROCEDURES. Rules and regulations and policies and procedures concerning and governing the Units, Common Elements, and/or this Community may be adopted, amended and/or repealed from time to time by the Board of Directors, and the Board of Directors may establish and enforce penalties for the infraction thereof, including the levying and collecting of fines for the violation of any of such rules and regulations or policies and procedures. The rules and regulations and policies and procedures may state procedural requirements, interpretations and applications of this Declaration and law, including blanket requirements, blanket interpretations, and blanket applications. The Board has the authority to adopt or vary one or more rules and regulations or policies and procedures that are different for different types of residences, if any exist. Any rules and regulations or policies and procedures that are adopted shall be in accordance with, and shall not be inconsistent with or contrary to, this Declaration.

3.11. COOPERATION WITH OTHER COMMUNITY ASSOCIATIONS AND/OR ANY DISTRICTS.

3.11.1. The Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s) and/or any district(s), to share the costs and/or responsibility for any maintenance, repair, replacement, or other matters, to perform maintenance, repair or replacement for any Person(s) in consideration of payment or reimbursement therefor, to utilize the same contractors, subcontractors, managers, or others who may perform services for the Association, any other community association(s) and/or any district(s), or to otherwise cooperate with any other community association(s) and/or any district(s) in order to increase consistency or coordination, reduce costs, or as may otherwise be deemed appropriate or beneficial by the Board of Directors in its discretion from time to time. The costs and expenses for all such matters, if any, shall be shared or apportioned between the Association and/or any other community association(s) and/or

any district(s), as the Board of Directors may determine in its discretion from time to time. Additionally, the Association shall have the right and authority at any time, from time to time, to enter into agreements and otherwise cooperate with any other community association(s), and/or any district(s) to collect Assessments, other charges, or other amounts which may be due to such entity and to permit any such entity to collect Assessments, other charges or other amounts which may be due to the Association; in any such instance, the Association shall provide for remittance to such entity of any amounts collected by the Association or to the Association of any amounts collected by any other community association(s) and/or any district(s).

3.11.2. Without limiting the generality of the foregoing, the governing board of a metropolitan district may furnish covenant enforcement and/or design review services within such metropolitan district if the Board of Directors enters into a contract with a metropolitan district to define the duties and responsibilities of each of the contracting parties, including the covenants that may be enforced by said metropolitan district, and if the covenant enforcement services of such metropolitan district do not exceed the enforcement powers granted by this Declaration, the rules and regulations of the Association, or any similar document containing the covenants to be enforced.

3.12. MANAGEMENT AGREEMENTS AND OTHER CONTRACTS. Any agreement for professional management of the Association's business or other contracts providing for the services of Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereof, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice; provided, however, that any such management agreement(s) entered into by the Association with a manager or managing agent prior to termination of the Period of Declarant Control shall be 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 or more Security Interests (and HUD or VA requires such approval).

3.13. MERGER. Declarant hereby reserves the right to merge the Association with one or more other common interest communities without the approval of any Member or any other Person. This right shall terminate automatically as provided in Section 1.43 of this Declaration.

3.14. COMPLIANCE WITH MAINTENANCE MANUALS. Notwithstanding anything to the contrary, the Board of Directors, acting on behalf of the Association, shall comply with the Project Maintenance Manual and all other maintenance manuals, if any, given by Declarant, Developer or Contractor to the Board of Directors or the Association, or otherwise obtained by the Board of Directors or the Association, regarding maintenance, repair and/or replacement of any portion of the Community or any Improvements therein. Further, the Board of Directors shall cooperate, at no cost or expense to the Board of Directors, with all inspections that may be undertaken by or at the request of Declarant, Developer or Contractor, on or with respect to the Community and Improvements therein.

3.15. NOTICE OF MEETINGS AND OTHER MATTERS OF THE ASSOCIATION. Notices of any meetings, newsletters and other correspondence or documents concerning the Association shall be sent to Declarant at the same time that such notices, newsletters, and other correspondence or documents are sent to the Members. However, the foregoing shall expire on the earlier of (a) a recording by Declarant

waiving the requirements set forth in this Section 3.15 or (b) ten (10) years after initial recording of this Declaration in the County.

3.16. SUBMISSION OF MATTERS TO OWNERS. Notwithstanding any provision of this Declaration, the Articles or the Bylaws to the contrary, at any time following the expiration or termination of the Period of Declarant Control, any Owner or group of Owners holding twenty percent (20%) or more of the votes in the Association for the matter in question shall have the right to require the Board to submit the decision of the Board of Directors regarding the matter to a vote of the Owners in their capacity as Members of the Association. If the Owners make a decision different from the Board by a vote of more than fifty percent (50%) of all eligible votes outstanding (not more than fifty percent (50%) of the votes that may be cast by Owners present at a meeting) or such higher percentage as may be specified in this Declaration or the Act, the decision of the Owners shall govern the actions of the Association.

ARTICLE 4 ASSESSMENTS

4.1. PERSONAL OBLIGATION FOR ASSESSMENTS. Each Owner of a Unit, including Declarant, by acceptance of a deed to a real property interest within the Project, 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 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 set-off 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 amount, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person(s) who was the Owner of such Unit at the time when the amount became due. The personal obligation for delinquent amounts (including Assessments) shall not pass to such Owner's successors in title unless expressly assumed by them.

4.2. PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Units, and for all of those purposes and activities that may be required of the Association, or the Board of Directors, or that the Association, or the Board of Directors, may be empowered to pursue pursuant to any of the Governing 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.

4.3. ALLOCATION OF COMMON EXPENSES. Except as otherwise expressly provided in this Declaration, all assessments for Common Expenses shall be allocated among the Units in accordance with their Allocated Interests set forth for each Unit in **Exhibit B** or as provided in Section 1.2. Such assessments will be determined by multiplying the total amount of each category of Common Expenses by the respective Allocated Interest for each Unit.

4.4. RATE OF ANNUAL AND SPECIAL ASSESSMENTS.

4.4.1. Annual and special Assessments shall be sufficient to meet the expected needs of the Association, including the payment of all anticipated Common Expenses, and shall be apportioned among the Units in accordance with their Allocated Interests. Notwithstanding the foregoing, however, the amount of the annual and special Assessments against the Unoccupied Units shall be set at a lower rate than the rate of annual Assessments and special Assessments against other Units, because the Unoccupied Units receive and benefit from fewer services funded by such Assessments than the other Units. Colorado Revised Statutes §38-33.3-315(3)(b) states that "Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited." Based on this provision, the Unoccupied Units shall pay annual and special Assessments at the rate of forty percent (40%) of any annual Assessment or special Assessment charged to Units other than the Unoccupied Units. Annual Assessments may be paid in regular increments over such period of time (monthly, quarterly or otherwise) as the Board deems appropriate and as set forth in the Policies.

4.4.2. 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 by the Association on a periodic basis.

4.4.3. Prior to automatic termination of the Special Declarant Rights as provided in Section 1.43 of this Declaration, Declarant may in its discretion, but shall not be required to, cover certain costs of the Association by payment of any amount(s), which shall constitute an advance against future amount (including Assessments) due from Declarant; provided, however, that any such advances which have not been credited against amounts (including Assessments) due from Declarant as of termination of the Period of Declarant Control shall then be repaid by the Association to Declarant, without interest, to the extent that the Association has funds in excess of its working capital funds, reserve funds, and operating expenses to date for the calendar year in which the Period of Declarant Control terminates; and provided further, however, that any of such advances which are not repaid to Declarant shall continue to constitute advances against amounts (including Assessments) due from Declarant until conveyance by Declarant of all of the property described on the attached **Exhibit A**. If Declarant elects in its discretion to pay any amounts as provided in this subparagraph, Declarant shall not, under any circumstances, be obligated to continue advance payment or funding of any amount(s) in the future.

4.5. **DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS.** Annual Assessments shall commence at such time as the Board of Directors may determine in its discretion, provided that the Board must have adopted a budget that has not been vetoed by the Members, as provided in this Declaration. Budgets shall continue to be so adopted by the Board of Directors 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 Board of Directors determines in its discretion from time to time, provided that the first annual Assessment shall be adjusted to reflect the time remaining in the first assessment year. Any Owner purchasing a Unit between installment due dates shall pay a pro rata share of the last payment due.

4.6. SPECIAL ASSESSMENTS. In addition to the annual Assessments authorized in this Article, the Board of Directors may levy, in any fiscal year, with the approval of the votes of sixty-seven percent (67%) of the Association votes cast by Members and, during the Period of Declarant Control, the vote of Declarant, each voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present (pursuant to Section 4.7 of this Declaration), 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 any portion of real property for which the Association has repair and/or replacement obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any expense or deficit incurred by the Association. Any such special Assessment shall be set against each Unit in accordance with the Allocated Interests set forth in this Declaration, except that the special Assessments against Unoccupied Units shall be set in accordance with subsection 4.4.1 hereof. A meeting of the Members called for the purpose of considering the establishment of a special Assessment shall be held in conformance with Section 4.7 hereof. Notwithstanding the foregoing, special Assessments levied during the Period of Declarant Control may not be used for the purpose of constructing capital improvements.

4.7. NOTICE AND QUORUM FOR ANY SPECIAL ASSESSMENTS. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.7 hereof 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 fifty percent (50% of all the Association 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.

4.8. ASSESSMENTS/CHARGES FOR SERVICES TO LESS THAN ALL UNITS IN THE COMMUNITY. The Association may, at any time and from time to time, provide services to any other areas containing less than all of the Units in the Community. If such services are not funded by the annual Assessments or special Assessments, then 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 is to be provided, with such agreement to include a statement and terms for payment of the costs, fees and expenses that are to be paid by such Owners for such services (including overhead expenses of the Association). Services that may be provided by the Association pursuant to this Section include, (a) the construction, care, operation, management, maintenance, repair, replacement, reconstruction and renovation of Improvements or property owned by such Owner(s); (b) the provision of any services or functions for such areas; (c) the enforcement of the provisions of any Supplemental Declaration or any other document or agreement for, on behalf of, and in the name of the applicable Owners; (d) the payment of taxes or other amounts for Owners with funds provided by such Owners; and (e) the procurement of insurance for such Owners.

4.9. LIEN FOR ASSESSMENTS.

4.9.1. The Association has a lien on each Unit for any amount levied against that Unit or the Owner(s) thereof, including for fines imposed against the Unit's Owner(s). Fees, charges,

late charges, attorney 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.

4.9.2. Recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessments is required. However, the Board of Directors or managing agent of the Association may prepare, and record in the County, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner(s) of the Unit, and a description of the Unit. If a lien is filed, the costs and expenses thereof shall be added to the Assessments 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.

4.10. PRIORITY OF ASSOCIATION LIEN.

4.10.1. A lien under this Article 4 is prior to all other liens and encumbrances on a Unit except:

4.10.1.1. liens and encumbrances recorded before the recordation of the Declaration;

4.10.1.2. a Security Interest on the Unit that has priority over all other security interests on the Unit and that was recorded before the date on which the amount(s) due to the Association became delinquent; and

4.10.1.3. liens for real estate taxes and other governmental assessments or charges against the Unit.

4.10.2. A lien under this Section is also prior to the Security Interests described in the preceding subsection 4.10.1.2 to the extent, if any, provided in CCIOA.

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

4.10.4. 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 United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Association lien.

4.11. CERTIFICATE OF STATUS OF ASSESSMENTS. The Association shall furnish to an Owner or such Owner's designee or to a Security Interest Holder or its designee, upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, 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 after written request within such times as

required by law, and is binding on the Association, the Board of Directors, and every Owner. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

4.12. APPLICATION OF PAYMENTS TO THE ASSOCIATION. Application of payments received by the Association from Owners for payment of amounts due to the Association by such Owners, shall be applied first to the payment of attorneys fees, fines, late charges and any other amounts (other than annual Assessments or special Assessments) due to the Association (in the order listed), if any; second to the payment of accrued interest at the rate specified in Section 4.13 below, if any; and third to the payment of annual Assessments and Assessments due to the Association.

4.13. EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any Assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date 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 Board of Directors, and the Board of Directors may assess thereon a monthly late charge in such amount as may be determined, from time to time, by the Board of Directors. The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose the lien against such Owner's Unit. If a judgment or decree is obtained, including, in a foreclosure action, such judgment or decree shall include interest (as provided above) and reasonable attorney's fees, together with the costs of the action, and may include late charges, as above provided. No Owner may be exempt from liability for payment of any 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, or because of dissatisfaction with the Association or its performance. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

4.14. SURPLUS FUNDS. Any surplus funds of the Association remaining after payment of or provision for Association expenses, and any prepayment of or provision for reserves, shall be retained by the Association and need not be paid to the Owners or credited to them.

4.15. WORKING CAPITAL FUND. The Association shall require the first Owner (other than Declarant) of any Unit who purchases that Unit from Declarant, to make a non-refundable contribution to the Association in an amount equal to three (3) times the then current monthly installment of the annual Assessment (regardless of whether or not annual Assessments have commenced as provided in 4.5 of this Declaration). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant of each Unit and shall be for the use and benefit of the Association, including to meet expenditures or to purchase equipment, property or services. Such contribution 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 his or her Unit, an Owner may be entitled to a credit from his or her transferee (but not from the Association) for the aforesaid contribution to working capital fund.

4.16. OTHER CHARGES. The Association may levy and assess charges, costs and fees for matters including the following, in such amounts(s) as the Board of Directors may determine in its discretion at any time from time to time, including reimbursement of charges that are made to the Association by its managing agent or other Person: copying of Association or other documents; returned checks; telefaxes; long distance telephone calls; transfer charges or fees upon transfer of ownership of a Unit; notices and demand letters; and other charges incurred by the Association for or on behalf of any

Owner(s). All such charges, costs and fees shall be in addition to the Assessments levied by the Association, but shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments.

4.17. CHARGES FOR MISCONDUCT. If any Association expense is caused by the misconduct of any Owner or his Permittees, the Association may assess that Association expense exclusively against such Owner and his Unit.

ARTICLE 5 DESIGN REVIEW

5.1. BOARD OF DIRECTORS, DESIGN REVIEW COMMITTEE. The Board of Directors shall be the governing body of the Association for all design review matters and approvals described in this Article 5. The Board may at any time, from time to time, appoint a Design Review Committee or individual representative to act on its behalf. If the Board does so, then the actions of the Design Review Committee or such representative shall be the actions of the Board, subject to the right of appeal as provided below. However, if the Design Review Committee or a representative is appointed by the Board, then the Board shall have full power over the Design Review Committee or representative, including the power to at any time withdraw any authority of the Design Review Committee or a representative to act on behalf of the Board and the power to at any time remove or replace members of the Design Review Committee or a representative.

5.2. REVIEW AND APPROVAL BY BOARD; REIMBURSEMENT FOR EXPENSES; REQUIREMENT FOR APPROVAL BY GOVERNMENTAL ENTITIES. Except as provided in Sections 5.9 and 5.13 of this Declaration, no Improvements shall be constructed, erected, placed, planted, applied or installed upon any Unit unless complete plans and specifications therefor (said plans and specifications to show exterior design, height, materials, color, and location of the Improvements, plotted horizontally and vertically, location and size of driveways, location, size, and type of landscaping, fencing, walls, plans for erosion control, windbreaks and grading plan, as well as such other materials and information as may be required by the Board), shall have been first submitted to and approved by the Board.

5.2.1. The Board shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the then-existing surroundings, residences, landscaping and structures.

5.2.2. In its review of such plans, specifications and other materials and information, the applicant shall submit an initial review fee of \$350.00 (as such fee may be adjusted from time to time by the Board), and the Board may require that the applicant(s) reimburse the Board for the actual expenses incurred by the Board in excess of such fee in the review and approval process (including costs associated with hiring professionals to review such materials on behalf of the Board). Such amounts, if any, shall be levied in addition to the Assessments against the Unit for which the request for Board approval was made, but shall be subject to the Association's lien for Assessments and subject to all other rights of the Association for the collection of Assessments, as more fully provided in this Declaration.

5.2.3. In addition to the required approvals by the Board as provided in this Article, the construction, erection, addition, deletion, change or installation of any Improvements shall also require the applicant to obtain the approval of all governmental entities with jurisdiction thereover, and issuance of all required permits, licenses and approvals by all such entities. Without limiting the generality of the preceding sentence, issuance of building permit(s) by the Town, if required, shall be a precondition to commencement of construction of, alteration of, addition to or change in any Improvement. In the event of any changes required by a governmental entity to plans and specifications previously approved by the Board, such changes must be again submitted for approval in accordance with Section 5.4 below.

5.3. DELEGATION (AND ACCEPTANCE) OF DESIGN REVIEW AND APPROVAL.

5.3.1. Declarant, during the time when Declarant has the right to appoint the Board, may delegate any or all design review and/or approval functions pursuant to this Declaration to any other architectural/design review committee, and may accept from any architectural/design review committee(s) delegation of any or all review and/or approval functions of such architectural/design review committee(s).

5.3.2. No delegation of design review and/or approval shall constitute a waiver of the Association's right of design review or approval as provided in this Declaration.

5.3.3. The Association has the authority and ability to delegate the rights and duties under this Article with conditions and restrictions that the entity accepting the delegation must follow.

5.4. PROCEDURES. The Board shall decide each request for approval within sixty (60) days after the complete submission of the plans, specifications and other materials and information which the Board may require in conjunction therewith. If the Board fails to decide any request within sixty (60) days after the complete submission of the plans, specifications, materials and other information with respect thereto, then the request for approval shall be deemed to have been denied by the Board.

5.5. VOTE AND APPEAL. A majority vote of the Board is required to approve a request for approval pursuant to this Article, unless the Board has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Board decides a request for approval, then any Owner shall have the right to an appeal of such decision to the full Board, upon a request therefor submitted to the Board within thirty (30) days after such decision by the representative.

5.6. PROSECUTION OF WORK AFTER APPROVAL. After approval of any proposed Improvement by the Board, the proposed Improvement shall be accomplished as promptly and diligently as possible and in complete conformity with the terms and conditions of the approval. Failure to complete the proposed Improvement within fifteen months after the date of approval of the application, as evidenced by a Letter of Compliance or such lesser time as may be provided on the application for approval, or to complete the Improvement in complete conformance with terms and conditions of the approval, shall constitute noncompliance with the requirements for approval of Improvements by the Board and a violation of this Article; provided, however, that the Board may, in its discretion, grant

extensions of time for completion of any proposed Improvement(s). The obligation to commence or complete the initial Residence on a Unit shall not be governed by the timing requirements.

5.7. INSPECTION OF WORK. The Board or its duly authorized representative shall have the right to inspect any Improvement prior to, during or after completion in order to determine whether or not the proposed Improvement is being completed or has been completed in compliance with the approval granted by the Board. However, unless the Board expressly states, in a written document, that an Improvement is being or has been completed in conformance with the Board approval therefor, no such conformance shall be implied from any inspection of the Improvement either during the work or after completion thereof.

5.8. STANDARDS/GUIDELINES. Except as provided in the last sentence of this Section, the Board has the authority, at any time from time to time, to enact, issue, promulgate, modify, amend, repeal, re-enact, and enforce architectural standards, guidelines, rules and regulations to interpret and implement the provisions of this Declaration. Without limiting the generality of the foregoing, such provisions may contain guidelines to clarify the types of designs and materials that may be considered in design approval, may state requirements for submissions in order to obtain review by the Board, may state procedural requirements, or may specify acceptable Improvement(s) that may be installed without the prior approval of the Board. In addition, such provisions may provide for blanket approvals, interpretations or restrictions on Improvements. By way of example, and not by way of limitation, such provisions may state that a certain type of screen door will be acceptable and will not require approval. All Improvements proposed to be constructed, and any guidelines that are adopted, shall be done and used in accordance with this Declaration. Notwithstanding the foregoing, all standards and guidelines promulgated by the Board shall require and be subject to obtaining any necessary governmental approvals.

5.9. VARIANCE. The Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article 10 of this Declaration (Restrictions), in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only if the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the Community and shall not be in contravention of the general intent and purpose hereof. Nothing in this Section shall obviate the need for obtaining approval from the Town in connection with any variance or adjustment if approval is otherwise required from the Town.

5.10. WAIVERS; NO PRECEDENT. The approval or consent of the Board, or any representative thereof, to any application for approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Board or any representative thereof, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required. Nor shall any such approval or consent be deemed to constitute a precedent as to any other matter or an approval or waiver by the Town for such matter. The granting or denial of a variance or adjustment by the Board, or any representative thereof, shall not be deemed to constitute a waiver of any right to grant or deny any other or future variance or adjustment by the Board or any representative thereof, as to any other request for variance or adjustment or other matters whatsoever.

5.11. RECORDS. The Association shall maintain written records (which may be in electronic form) of all applications submitted to it and all actions taken by it thereon for such period of time as may be determined by the Board from time to time and, subject to Section 3.8 of this Declaration, such records shall be available to Members for inspection at reasonable hours of the business day.

5.12. LIABILITY. Neither the Board nor any members thereof, shall be liable in equity or damages to any Person submitting requests for approval or to any Owner or other Person by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within their jurisdiction hereunder. In reviewing any matter, the Board shall not be responsible for the safety, whether structural or otherwise, of the Improvement(s) submitted for review, nor the conformance with applicable building codes or other governmental laws or regulations, nor any other matters, and any approval of an Improvement by the Board shall not be deemed an approval of any of the same. No Member or other Person shall be a third party beneficiary of any obligation imposed upon, rights accorded to, action taken by, or approval or disapproval granted by the Board.

5.13. DECLARANT'S EXEMPTION. Notwithstanding anything herein to the contrary, until automatic termination of the Special Declarant Rights as provided in Section 1.43 of this Declaration, Declarant shall be exempt from the provisions of this Article except for the requirements to obtain approval from all governmental entities with jurisdiction thereover (including as provided in subsection 5.2.3 hereof).

ARTICLE 6 INSURANCE

6.1. INSURANCE. The Association shall maintain insurance in connection with the Common Elements. The Association shall maintain insurance as required by applicable law or applicable regulation, including CCIOA, which insurance shall include property insurance and commercial general liability insurance. In addition, the Association may maintain insurance against such other risks as the Board of Directors may elect from time to time, including fidelity coverage and 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 or officers on behalf of the Association, as well as insurance on such other property and/or against such other risks as the Board of Directors may elect in its discretion from time to time.

6.2. INSURANCE ON THE STRUCTURES ON UNITS. The Board or its agent shall obtain and maintain, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, a policy of property insurance covering the structure(s) located on each Unit, except for land, excavations, foundations and other matters normally excluded from property policies, in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the insurance policy. Said policy shall contain a "Replacement Cost Endorsement" providing that any claim will be settled on a full replacement cost basis without deduction for depreciation, an "Inflation Guard Endorsement," an "Agreed Amount Endorsement," and may include other endorsement(s) as deemed appropriate by the Board from time to time. Such insurance shall afford protection against at least the following:

6.2.1. loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

6.2.2. such other risks as shall customarily be covered with respect to designs similar in construction, location and use, including all perils normally covered by the standard "*All Risk*" endorsement, where such is available.

6.3. GENERAL PROVISIONS OF INSURANCE POLICIES. All policies of insurance carried by the Association shall comply with this Section. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, 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 non-contributory 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 on the Unit insured by such insurance policy. 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 against any Owner or member of such Owner's household. Further, all policies of insurance carried by the Association shall also 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.

6.4. DEDUCTIBLES. The Association may adopt and establish written non-discriminatory rules and regulations or policies and procedures relating to the responsibility for deductibles. Any loss, or any portion thereof, that falls within the deductible portion of a policy that is carried by the Association may, at the election of the Board of Directors in its discretion, be borne by the Person who is responsible for the repair and maintenance of the property that is damaged or destroyed; be apportioned among the Persons sharing in a joint duty of repair and maintenance; and/or be partly or wholly borne by the Association and/or any such Person(s). 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 one or more Owners. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner(s) in question and the Association may collect such amounts from said Owner(s) in the same manner as any Assessment.

6.5. PAYMENT OF INSURANCE PROCEEDS. Any loss covered by an insurance policy described in Section 6.1 or Section 6.2 hereof 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 Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 8.1 of this Declaration, the proceeds must be disbursed first for the repair, restoration or replacement of the damaged property; and the Association, Owners and Security Interest Holders 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, restored or replaced and any budget or reserve deficit funded, or unless the Community is terminated.

6.6. 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.

6.7. ACCEPTABLE INSURANCE COMPANIES. Each insurance policy purchased by the Association or Owners under this Article 6 must be written by an insurance carrier that is authorized by law to do business in the State of Colorado. Neither the Association nor any Owner shall 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) that could prevent mortgagees or any Owner from collecting insurance proceeds.

6.8. INSURANCE TO BE MAINTAINED BY OWNERS. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Owner's Unit and the Improvements thereon, as well as on personal property belonging to an Owner, and public liability insurance coverage on each Unit, shall be the responsibility of the Owner of such Unit. Each Owner shall obtain and maintain liability insurance coverage for a minimum of \$1,000,000 for bodily injury, including death, and property damage arising out of a single occurrence or in the aggregate. Such minimum amount of insurance shall be adjusted every five years by the increase in the CPI Index from the year of recordation of this Declaration. The CPI United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Items-All Urban Consumers (base year 1982-84=100) for the U.S. Town Average, shall be the CPI Index utilized for such adjustment, or other similar index if such index is not then readily available. In addition, each Unit shall be insured in an amount not less than the full replacement value of the Improvements thereon and such insurance shall name the Association as an additional insured under the policy. In the event the homeowners' insurance policies held by different Owners of Units or held by an Owner and the Association and that are underwritten by different insurers, the Owner shall be responsible for ensuring that such Owner's insurer agrees, in the event damage occurs to the covered property, to facilitate payment of the insurance proceeds when two or more insurers are involved and that each insurer will pay (a) all undisputed proceeds and (b) all disputed proceeds (subject to the right of each such insurer to recover from the other insurers any such sums for which the other insurers are found to be liable).

ARTICLE 7 PARTY WALLS

7.1. DEFINITION. For purposes of this Article, "*Party Wall*" means any wall that is part of the original construction of the structures located on Units as such wall(s) may be repaired or reconstructed from time to time, is placed on or immediately adjacent to a Unit boundary line, and

separates two (2) or more structures, or any portion(s) thereof, as a common wall; and any monolithic slab located on two (2) or more Units. Without limiting the generality of the foregoing, "*Party Wall*" also includes any two walls that meet the foregoing criteria and that are separated by a small amount of air space.

7.2. GENERAL RULES OF LAW TO APPLY. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.3. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Members of the two Units on either side of the Party Wall, except as otherwise provided in this Declaration; provided, however, that the cost of repair and replacement of the finished surface of a Party Wall that is located within a residence shall be at the sole cost and expense of the Owner of the Unit on which such residence is located.

7.4. DESTRUCTION BY FIRE OR OTHER CASUALTY. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner of a Unit on which such Party Wall is or was located may restore it. Except as otherwise provided in this Declaration, the Members of the two Units that share such Party Wall shall share equally the costs and expenses of such restoration. Without limiting the generality of the foregoing, any Member may call for larger contributions from one or more others under any rule of law regarding liability for negligent or willful acts or omissions.

7.5. REPAIR TO MONOLITHIC SLABS AND MONOLITHIC FOUNDATIONS. If any monolithic slab requires repair, the entire monolithic foundation shall be involved in the repair process. The Owners and occupants of each of the Units on which such monolithic foundation is located shall cooperate regarding repairs to such foundation.

7.6. WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.7. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Member to contribution from any other Member under this Article shall be appurtenant to and run with the land and shall pass to such Member's successors in title to the Unit to which such Member's membership pertains.

7.8. RIGHTS OF OWNERS. The Owners of each Lot with a Party Wall shall have the following rights:

7.8.1. A perpetual and reciprocal easement in and to that part of the adjacent Unit on which such Party Wall is located, for Party Wall purposes only, including mutual support, maintenance, repair and inspection. For the purposes of repairing or maintaining a Party Wall, the Owners of each Unit with a Party Wall are granted the right to enter onto the adjacent Unit that has the same Party Wall and to go inside any residence or other Improvements thereon to do work necessary in the exercise of rights provided herein at all reasonable times after reasonable notice to the occupants of such adjacent Unit, or immediately in the event of an emergency.

7.8.2. After reasonable notice to the occupants of the adjacent Unit on which a Party Wall is located, the Owner of a Unit that has such Party Wall thereon shall have the right to

break through an appurtenant Party Wall for the purposes of repairing or restoring sewer, water, or other utilities located within such Party Wall, subject to the obligation to promptly restore such Party Wall to its previous structural condition at the sole cost and expense of the Owner who effectuates such breakage.

7.9. ARBITRATION. In the event of any dispute arising concerning a Party Wall, under the provisions of this Article, such dispute shall be resolved as follows: each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor by the Member with whom such party shares a Party Wall, the Board shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

ARTICLE 8 DAMAGE OR DESTRUCTION

8.1. DAMAGE OR DESTRUCTION.

8.1.1. Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

8.1.1.1. the Community is terminated; or

8.1.1.2. repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

8.1.1.3. the Members casting sixty-seven percent (67%) of the Association's votes, in person or by proxy, including every Member whose Improvements will not be rebuilt, vote not to rebuild; or

8.1.1.4. prior to conveyance of any Unit to a Person other than Declarant, a Security Interest Holder rightfully demands all or a substantial part of the insurance proceeds.

8.1.2. The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is an Association expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests of all the Units.

8.2. UNITS. Except as otherwise provided in Section 8.1, any damage to or destruction of any structure located on a Unit shall be promptly repaired and reconstructed by the Owner(s) thereof. "Repaired and reconstructed," as used in this Section, shall mean restoring the structure to substantially

the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. If the Owner(s) of a Unit do not commence repair and reconstruction within a reasonable time, as provided above, and diligently pursue the same in conformance with the plans approved by the Board then the Association may, in its reasonable discretion, after providing the notice required in Section 9.3 hereof, enter upon the Unit and complete such repair and reconstruction. If the Members vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated as if the Unit had been taken through eminent domain as provided in Section 14.10 of this Declaration, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting such reallocations. Alternatively, the Association may instead enter upon the Unit for the purpose of demolishing the damaged structure, removing all debris and restoring the Unit to a vacant unoccupied Unit condition.

ARTICLE 9 MAINTENANCE

9.1. GENERAL.

9.1.1. Maintenance, repair and replacement of the Common Elements (including private alleyways, private drive areas and drainage easements) and all Improvements located thereon (including street lights in the private alleyways and/or private drive areas, mailbox kiosks, plazas, and picnic areas, if any), and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such Improvements have been dedicated to and accepted by a local government entity for the purpose of maintenance, repair and replacement or unless such maintenance, repair and replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. The Association shall regularly inspect the General Common Elements and Limited Common Elements and other items of the Project that are not otherwise specifically required to be maintained by an Owner as required or recommended under the Project Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. Without limiting the generality of the foregoing, the Association shall be responsible for the monitoring and maintenance of the fire protection systems located throughout the Community, even though such systems may be located within one or more Residences. Further, the Association may provide such other maintenance, repair and replacement as the Board of Directors deems appropriate from time to time, including publicly dedicated property and Improvements located thereon. The costs, expenses, fees, and other amounts to be expended for the maintenance, repair and replacement that is provided for in this subsection shall, subject to Section 9.5 hereof, be collected by the Association as Assessments and paid as Association expenses.

9.1.2. In addition to the foregoing, the Association shall also maintain, repair and replace the exteriors of the Residences as follows (to the extent that such are applicable): paint or stain, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces; provided, however, that such exterior maintenance, repair and replacement shall not include exterior doors or garage doors, except painting or staining, and shall also not include

foundations, driveways, patios and walks located within Unit boundaries, exterior light fixtures attached to a structure, windows or window screens, or glass surfaces. The costs to be expended for the maintenance, repair and replacement performed by the Association shall, subject to Section 9.5 hereof, be Assessments.

9.1.3. Except as provided in subsection 9.1.1 above, the maintenance, repair and replacement of each Unit, and the Improvements thereon, shall be performed by the Owner(s) thereof at such Owner's sole cost and expense. However, the foregoing is subject to the provisions of Section 9.6, and nothing in this Article shall eliminate any requirement to obtain approval from the Association or the Board in connection with an alteration or replacement of any improvements. Each Owner shall regularly inspect its Unit and any Limited Common Elements allocated solely to the Owner's Unit as required or recommended under the Owner Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair and perform Repair Work as necessary. Notwithstanding anything to the contrary, each Owner shall comply with the Owner Maintenance Manual and all other maintenance manuals, if any, given by Declarant, Developer or Contractor to the first Owner of the Unit, or otherwise obtained by the first Owner of the Unit, regarding maintenance, repair and/or replacement of any portion of the Unit and the Improvements thereon.

9.2. CHANGED OR ADDED IMPROVEMENTS. Any Improvement that has been changed, altered or modified by or for an Owner or occupant of a Unit shall be maintained, repaired and replaced by such Owner to the extent of the change, alteration or modification. If the Improvement is newly constructed, erected, placed, planted, applied or installed by an Owner or occupant of a Unit after conveyance of such Unit by Declarant, then the entirety of such Improvement shall be maintained, repaired and replaced by, the Owner of such Unit. However, the Board of Directors may at any time, by resolution, elect to have the Association provide such maintenance, repair or replacement; provided that any such resolution shall be subject to being repealed, revoked, modified, changed or altered, at any time, from time to time, by the Board.

9.3. ASSOCIATION'S RIGHT TO MAINTAIN, REPAIR AND RECONSTRUCT. In the event any Owner shall fail to perform his maintenance, repair, and/or reconstruction obligations in a manner satisfactory to the Board of Directors, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owner(s) by the 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 reconstruction, or to demolish any changed structure, remove debris and restore the Unit to a vacant unoccupied Unit condition. Notwithstanding the foregoing, no notice shall be required in emergency situations. The cost of such maintenance, repair, reconstruction, demolition, removal or restoration shall be the personal obligation of the Owner(s) 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 4 of this Declaration (Assessments), including interest, late charges and lien rights.

9.4. NON-INTERFERENCE WITH GRADE AND DRAINAGE.

9.4.1. Each Owner shall maintain the grading on its Unit (including grading around the building foundation at the slope and pitch fixed by the final grading thereof, including

landscaping and maintenance of the slopes, so as to maintain the established drainage (as defined below). Similarly, the Association shall maintain the grading on the Common Elements (including areas within Units that are subject to drainage easements as shown on the Map) at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes, so as to maintain the established drainage. Each Owner and the Association agree, for themselves and their, heirs, personal representatives, successors and assigns, that they will not in any way interfere with or obstruct the established drainage pattern over any real property within the Project. Except as to Declarant, in the event that it is necessary or desirable to change the established drainage over any Unit or the Common Elements, then the party responsible for the maintenance of such real property shall submit a plan to the Board for its review and approval in accordance with Article 5 of this Declaration, and any such change shall also be made in accordance with all laws, regulations and resolutions of all applicable governmental entities, including the Town. For purposes of this Section, "*established drainage*" is defined as the drainage that exists at the time final grading by Declarant is completed.

9.4.2. The Owner of a Unit should not plant flower beds (especially annuals), vegetable gardens and other landscaping that requires regular watering, within five (5) feet of the foundation of the Residence or any slab on the Unit. If evergreen shrubbery is located within five (5) feet of any foundation wall or slab, then the Owner of the Unit should water such shrubbery by "controlled hand-watering," and should avoid excessive watering. Further, piping and heads for sprinkler systems should not be installed within five (5) feet of foundation walls or slabs.

9.5. **DECLARANT/DEVELOPER/CONTRACTOR INSPECTIONS.** During the first three years following the formation of the Community, Developer, Contractor and Declarant, or any of them, may periodically perform a walk-through of the Project, including all Common Elements and all Units, to inspect the performance of the various building components utilized in and through the Project and in connection with the Contractor's warranty. The Association and all Owners shall provide reasonable access to the Common Elements, Residences within the Units, other Improvements, the roof, the mechanical rooms, decks, and storage room(s). Declarant, Developer, Contractor or Association shall give advance notice to the Owners of the date(s) and time(s) for such inspections. The purpose of such inspections is to observe performance of the building components, to detect potential problems, and to notify the proper subcontractors, designers or manufacturers of any defects, as well as generally ascertaining that the building components are performing as designed.

9.6. **ACTS OR OMISSIONS.** Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair, reconstruction, demolition, removal or restoration of the Common Elements, a Unit, or any Improvements located thereon, is caused by the act or omission of any Owner, or by the act or omission of a Permittee of Owner's, the cost or expense of such repair, maintenance, replacement, reconstruction, demolition, removal or restoration 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 amounts incurred by the Association for such repair, maintenance, replacement and/or reconstruction shall be added to the Assessments to which such Owner's Unit is subject and shall be subject to all of the terms and provisions

of Article 4 of this Declaration (Assessments). A determination of the act or omission of any Owner, or a Permittee of an Owner, and the amount of the Owner's liability therefor, shall be made by the Board of Directors at a hearing after notice to the Owner.

ARTICLE 10 EASEMENTS

10.1. OTHER EASEMENTS. In addition to any other easements that may be granted or reserved elsewhere in this Declaration or by law, the following Sections describe easements to which the Community is or will be subject.

10.2. ACCESS EASEMENT FOR REPAIRS. Each Unit shall be subject to an easement in favor of the Association, including the agents, employees and contractors thereof, for performing maintenance, repair, replacement and/or reconstruction, or other services as provided in the Governing Documents, including maintenance, repair, replacement and/or reconstruction pursuant to Article 8 of this Declaration (Exterior Maintenance); and for and incidental to enforcement of any term or provision of the Governing Documents. 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 expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, the rights and easements granted in this Section may be exercised only during reasonable hours after reasonable notice to the Owner(s) or occupant(s) of any affected Unit; except that no such notice shall be required in connection with any exterior, non-intrusive maintenance; and except that in emergency situations entry upon a Unit may be made at any time provided that the Owner(s) or occupant(s) of each affected Unit shall be notified of emergency entry as early as is reasonably possible. The interior of any Residence located on a Unit shall not be subject to the easements provided for in this Section.

10.3. ACCESS EASEMENT. Each Unit shall be subject to certain nonexclusive easements in favor of the Association and other Unit Owners, including all Permittees of such Owners, for the purpose of clear and unhindered vehicular and/or pedestrian ingress and egress, as well as the installation of underground utilities to each Owner's Unit. The easements described in this Section include (a) those specific easements depicted on the Map, which have the boundaries and limitations as shown on the Map and (b) a nonexclusive easement as necessary to accomplish the purposes described in this Section, provided that such easements do not extend within, under or across the interior of any Improvements located on a Unit. The Owners of the Units on which portions of the access easement described in this Section 10.3 is located retain the rights of ownership, use and occupancy of the portions of their respective Units upon which the easement is located insofar as said ownership, use and occupancy does not impair the use and enjoyment of the easement as described in this Section. No Owner may obstruct or restrict the full permitted use of the easement by any other party entitled to use same under this Declaration. The Association shall be responsible for the maintenance, improvement, repair, replacement, and clearing of major obstructions (including snow removal) from the easement area.

10.4. UTILITIES EASEMENT. Declarant hereby reserves for itself and the Association a blanket easement for utilities and the installation, use, replacement, repair and maintenance of utilities, including water, sewer, gas, telephone, electricity, computer cable, and master television antenna or cable or satellite television systems, if any, upon, across, over and under (a) the Common Elements and

(b) those portions of Units as depicted on the Map or on a Utility Plan approved by the Town (but in no event within, under or across any Improvements located on a Unit). By virtue of this blanket easement it shall be expressly permissible to erect, use, and maintain the necessary facilities, equipment and appurtenances on the Common Elements, and to affix, use, repair, and maintain water and sewer pipes, gas, electric, telephone, computer 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, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof; provided, however, that such right and authority in Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.43 of this Declaration, at which time said reserved right shall vest in the Association. The easement provided for in this Section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Elements.

10.5. DRAINAGE EASEMENT. Drainage easements for the benefit of the Unit Owners, Declarant and the Association are identified on the Map. No Improvements shall be placed or permitted to remain on any Unit nor shall any change in grading be permitted to exist that may change the direction of flow or obstruct or retard the flow of water or other moisture through channels or swales within such drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon the drainage easements, at any time, to construct, repair, replace or change drainage pipes, structures or drainage ways, or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time; provided, however, that such right and authority in Declarant shall automatically cease at such time as the Special Declarant Rights terminate as provided in Section 1.31 of this Declaration, at which time said reserved right shall vest solely in the Association. All costs incurred by Declarant or the Association to make repairs or corrections resulting from a Unit Owner's negligence or intentional misconduct shall be paid by Unit Owner.

10.6. ENCROACHMENT EASEMENTS. If there is an encroachment of Common Elements upon a Unit, or a Unit upon Common Elements or another Unit, a valid easement for the encroachment and maintenance thereof shall exist so long as such encroachment does not materially adversely interfere with the use or occupancy of any portion of the Project. Encroachments referred to herein include encroachments caused by (a) roof overhangs located above an adjacent Unit's roof. (b) errors in the original construction of the Buildings housing the Units, (c) errors in the Community Map, (d) settling, rising or shifting of the earth and (e) changes in position caused by repair or reconstruction of all or any part of the Project.

10.7. ACCESS EASEMENTS FOR EMERGENCIES AND REPAIR WORK.

10.7.1. A general non-exclusive easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property, including all Units and all Common Elements in the proper performance of their duties; provided, however, that the foregoing shall not be construed to relieve law enforcement officers of the obligation to obtain a warrant for entry into any portion of the Residence if a warrant would otherwise be required by applicable law.

10.7.2. Some of the Common Elements are or may be located within a Unit. All Owners shall permit a right of entry to the Board, a managing agent, or any other person authorized by the Board or a managing agent, whether the Owner is present or not, for access through each Unit to all Common Elements, from time to time, as may be necessary for Repair Work for any of the Common Elements located thereon or accessible therefrom or for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit.

10.7.3. Notwithstanding anything in Section 10.7.1 to the contrary, for Repair Work other than emergency Repair Work, entry shall be made only on a regular business day during regular business hours, after providing the Owner with at least one day's written notice. Any non-emergency Repair Work that will affect access to or use of a particular Unit shall be done only at times approved by such Unit Owner, which approval will not be unreasonably withheld, such that Repair Work does not interfere with the normal operations of the affected Unit. In an emergency, entry shall be made at any time, provided that a reasonable effort according to the circumstances is made to give advance notice of entry and to minimize the effect of any such entry on any Owner and such Owner's Permittees and invitees.

10.7.4. The Board or its managing agent is granted the authority to use such reasonable force as is necessary to gain entry into a Unit in the event of an emergency, if no other means of entry are available in view of the circumstances. So long as an Owner has provided the authorized managing agent with a key as set forth above, the Association shall bear the full responsibility and expense of all damages incurred to the Unit and/or Common Elements resulting from such forcible entry.

10.7.5. All damage to the interior or any part of a Unit resulting from the Repair Work of any of the Common Elements at the instance of the Association shall be paid for as part of the General Assessment by all of the Owners benefitted by the Repair Work. No Owner shall be entitled to diminution or abatement for inconveniences or discomfort or lost profits arising from the Repair Work or other action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged Improvements shall be to a condition substantially the same as the condition in which they existed prior to damage.

10.7.6. Notwithstanding the foregoing, if any such damage is the result of the failure of an Owner to provide the authorized managing agent with a key to its respective Unit and/or the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event an Owner fails within a reasonable time upon proper notice to pay the cost of the damages incurred, the Board may pay for said damages and charge such Owner responsible as a Default Assessment.

10.8. ADDITIONAL EASEMENTS. If at any time after the date hereof (a) additional emergency easements are required by law or by insurance underwriting requirements generally applicable to residential projects, (b) any additional easements for access to or use of utilities are reasonably necessary for the use and operation of any one or more Units, or (c) any additional easements are necessary or desirable to effectuate the purposes of this Declaration, each Owner shall, within a reasonable time after

written request by any other Owner, grant such easement; provided, however, that (x) no Owner granting any such easement is required to construct Improvements, expend any monies, or incur other material liabilities in order to provide such easement (other than costs paid solely by the Owner(s) for whose benefit such easement is to be granted), (y) such easement will not materially increase expenses, or create any material additional expenses, for any portion of the Project (unless allocated to and paid by the Owner(s) for whose benefit such easement is to be granted or unless required by law), and (z) the use of such easement will be non-exclusive and will not unreasonably interfere with the access to , operation, use or enjoyment of such Owner's Unit or violate or interfere with the rights or interests of such Owner's Permittees. The Owners requesting any such easement shall pay all costs and expenses in connection with the approval and granting of any such easement, including all engineering fees, recording charges and legal fees and expenses reasonably incurred by the Owners or any of them in connection therewith. If new easements are created, this Declaration and Community Map shall be amended, if necessary, by Declarant or the Association, as the case may be, and such easements shall have the same force, effect and priority as if such easements were originally contained herein.

ARTICLE 11 RESTRICTIONS

11.1. GENERAL PLAN. It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Units.

11.2. RESTRICTIONS IMPOSED. The Community is subject to the recorded easements, licenses and other matters listed on **Exhibit C** attached hereto and incorporated herein by this reference. In addition, Declarant declares that all of the Units shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

11.3. CHAMONIX VAIL DEED RESTRICTION. In addition to the restrictions on use and occupancy set forth above, the Units are also subject to the Deed Restriction Agreement for the Occupancy and Transfer of Chamonix Vail Residential Dwelling Units (the "**Deed Restriction**"). Enforcement and modification of the Deed Restriction is a matter between the Owners of Units and the Town.

11.4. RESIDENTIAL USE; PROFESSIONAL OR HOME OCCUPATION. Subject to Section 14.6 of this Declaration, Units shall be used for residential use only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes other than a home occupation as permitted by the Town Code.

11.5. HOUSEHOLD PETS. No animals, horses, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Units; provided, however, that the Owners of each Unit may keep a reasonable number of bona fide household pets (including dogs, cats or other domestic animals), so long as such pets are not kept for any commercial purpose, are kept in compliance with the Town Code and are not kept in such number or in such manner as to create a nuisance to any resident of a Unit. The Association shall have, and is hereby given, the right and authority, from time to

time, to: set a maximum number of household pets; set a size or poundage limit on pets; regulate the type(s) of pets that are permitted to be kept; determine in its sole discretion that any dog(s), cat(s) or other household pet(s) are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance; determine that an Owner is in violation of the leash laws of the applicable jurisdiction or other applicable governmental laws, ordinances, or other provisions related to pets; or determine that an Owner is otherwise in violation of any provision of this Section. If the Association determines that any of the foregoing have been or are being violated, the Association may take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets is coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and all costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of Assessments as provided in Article 4 of this Declaration.

11.6. TEMPORARY STRUCTURES; UNSIGHTLY CONDITIONS. No structure of a temporary character, including a house, trailer, tent or shack shall be placed or erected upon any Unit; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other capital improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure or other Improvement shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Unit as to be visible from the street or from any other Units.

11.7. MISCELLANEOUS IMPROVEMENTS. No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Unit other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House," "For Rent" or security sign(s) consistent with the Town Code that pertains to that Unit. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by Declarant (with the written consent of Declarant) shall be permissible.

11.7.1. Other than during initial construction, no construction materials, wood piles, or storage areas shall be so located on any Unit as to be visible from a street or from the ground level of any other Unit.

11.7.2. Except for solar panels, which are regulated by law, and heating tape, which is approved in advance by the Board as to type and location, no types of refrigerating, cooling or heating apparatus shall be permitted on a roof. Additionally, no such apparatus shall be permitted elsewhere on a Unit except when appropriately screened and approved by the Board and the Town, as necessary.

11.7.3. Except upon the prior approval of the Board and in full compliance with the Town Code, no exterior radio antenna, television antenna, audio, visual reception device, antenna, or satellite dish of any type shall be installed, placed, erected or maintained on any Unit; provided, however, that any such devices may be erected or installed by Declarant during its sales or construction upon the Units; and provided further, however, that the requirements of this subsection shall not apply to those antenna (including certain satellite dishes) specifically covered by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended.

As to antenna (including certain satellite dishes) that are specifically covered by the Telecommunications Act of 1996 regulations adopted thereunder, as amended, the Association shall be empowered to adopt rules and regulations or policies and procedures governing the types of antenna that are permissible and, to the extent permitted by the Telecommunications Act of 1996 or regulations adopted thereunder, as amended, establishing reasonable, non-discriminatory restrictions or requirements relating to appearance, safety, location and maintenance.

11.7.4. Fences shall be permitted only in accordance with the prior approval of the Board and in accordance with the Town Code.

11.7.5. No wind generators, hanging articles (including clotheslines), drying yards, or service yards, shall be constructed, installed, erected or maintained on any Unit, except with the prior, written approval of the Board and compliance with the Town Code.

11.7.6. Dog runs shall be permitted on a Unit only with the prior, written approval of the Board and compliance with the Town Code.

11.7.7. All Improvements must comply with applicable law.

11.8. VEHICULAR PARKING, STORAGE AND REPAIRS.

11.8.1. No house trailer, camping trailer, boat trailer, hauling trailer, jet ski, boat, or accessories thereto, truck (excluding pickup trucks that are one ton or less), self-contained motorized recreational vehicle, or other type of recreational or commercial vehicle or equipment, may be parked or stored on a Unit unless the parking or storage is within a garage area of a Unit or on a paved, impervious surface driveway within a Unit and not on a Common Element (subject to any provisions of any guidelines or standards adopted by the Board). A "commercial vehicle" means a vehicle that: is used to transport cargo or passengers for profit or hire, or otherwise to further the purposes of a business or commercial enterprise; and may (but is not required to) contain signage, advertising, or written information on the vehicle or extending from the vehicle. This restriction, however, shall not restrict trucks or other commercial vehicles that are necessary for construction or maintenance of any portion of the Community or any Improvements located thereon.

11.8.2. Except for designated parking spaces and areas within the Community, parking shall not be permitted on the private roadways in the Community and the Association may elect to post the same.

11.8.3. Except as provided above, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked anywhere in the Community. An "*abandoned or inoperable vehicle*" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seven days or longer, or which does not have an operable propulsion system installed therein, or which is not then currently registered and licensed. Notwithstanding the foregoing, Owners may park vehicles on

driveways within their own Units while on vacation or during a period of illness and such vehicles shall not be deemed to be abandoned.

11.8.4. In the event the Association shall determine that a vehicle is parked or stored in violation of subsections 11.8.1, 11.8.2, 11.8.3, or 11.8.4 hereof, then a written notice describing said vehicle may be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or may be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

11.8.5. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats, may be performed or conducted in the Community unless it is done within a completely enclosed structure which screens the sight and sound of the activity from the street, alley, and from adjoining property. The foregoing restriction shall not be deemed to prevent the washing and polishing of any motor vehicle, boat, trailer, motor cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing on a Unit.

11.8.6. Garage spaces located within the Units may only be used for vehicular parking, bicycle parking, temporary storage and utility functions in accordance with applicable provisions of this Declaration and reasonable Rules established from time to time by the Association. Under no circumstances shall garage areas be converted into habitable living areas.

11.8.7. This Section 11.8 shall be construed and applied in accordance with all applicable laws, including CCIOA.

11.9. COMPLIANCE WITH LAWS. Each Owner shall comply, and shall cause his or her Permittees to comply, with all applicable laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Project. Nothing shall be done or kept in or on any Unit or in or on the Common Elements, or any part thereof, that would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the same.

11.10. COMPLIANCE WITH GOVERNING DOCUMENTS. Each Owner shall comply strictly with, and shall cause his or her Permittees to comply strictly with, all of the provisions of the Governing Documents, and the decisions and resolutions of the Association or the Board adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Board in the name of the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

11.11. PROPERTY TO BE MAINTAINED. Each Owner shall at all times maintain his or her Unit in a manner consistent with the standard of first class residential real estate properties of comparable size in the Vail area. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Unit so that same are visible from

any neighboring Unit or street, except as necessary during any period of construction. No unsightliness or waste shall be permitted on or in any part of a Unit. Each Owner shall install, plant, maintain, repair, replace, alter and service as appropriate the yard, grass, flowers, trees, shrubbery and other landscaping features on the Unit.

11.12. NO NUISANCES, OFFENSIVE, HAZARDOUS, OR ANNOYING ACTIVITIES. No nuisances or offensive activity shall be permitted on any part of the Community nor shall anything be done or placed on or in any part of the Community that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No activity shall be conducted on any part of the Community that is or might be unsafe or hazardous to any person or property. No odor shall be emitted on any part of the Community that is noxious or offensive to others. Without limiting the generality of the foregoing, no firearms shall be discharged within any part of the Community (including the Units) and no open fires shall be lighted or permitted within the Community, except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace. Further, no hazardous materials or chemicals shall at any time be located, kept or stored in, on or at any Unit except such as may be contained in household products normally kept at homes for use of the residents thereof and in such limited quantities so as to not constitute a hazard or danger to person or property and provided further that such products and substances are stored, used, transported and disposed of strictly in accordance with all applicable environmental laws. In no event shall the items set forth herein be deemed to be a complete list of nuisance or offensive activities prohibited hereunder, and the Board shall have the right to terminate any other nuisance or otherwise offensive activity carried on by an Owner in violation of the provisions hereof. As used herein, the term "nuisance" shall not include any activities of Declarant that are reasonably necessary to the development of and sales activities in the Community.

11.13. NO ANNOYING LIGHTS, SOUNDS OR ODORS. No light shall be emitted from any Unit that is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Unit that is unreasonably loud or annoying; and no odor shall be permitted from any Unit that is noxious or offensive to others. Further, no annoying light, sound or odor shall be permitted that violates any applicable laws, ordinances or regulations or that may be seen, heard or smelled from any Unit. All outdoor lighting and light fixtures shall comply with the Town Code.

11.14. RESTRICTIONS ON TRASH AND MATERIALS. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Unit nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup; provided, however, that no such container shall be deposited on a street for garbage pickup prior to 5:00 a.m. on the day such garbage will be picked up. Further, no trash or materials shall be permitted to accumulate in such a manner as to be visible from any Unit. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner. Trash containers shall comply with the Town Code.

11.15. UTILITY SYSTEMS. Utility systems located on or serving a Unit shall be operated and maintained efficiently and in a manner that does not place undue operating, maintenance, repair or replacement costs on the mechanical and utility systems of another Unit or the Common Elements.

11.16. LEASES. All Leases shall be governed by the Chamonix Vail Employee Housing Guidelines

11.17. RESTRICTIONS ON MINING OR DRILLING. No property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

11.18. DECLARANT'S USE. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Project such facilities as Declarant deems reasonably necessary or incidental to the construction, completion and sale of the Units. Without limiting the generality of the foregoing, Declarant may maintain management offices, construction facilities and equipment, storage areas, signs, sales offices, parking areas and lighting facilities. Declarant expressly reserves the right to locate any sales office or management office within or on any Unit owned by Declarant and designated from time to time. The rights retained by Declarant in this Section 11.18 shall terminate upon conveyance by Declarant of all of the Units to Owners other than Declarant or 20 years after the recording of this Declaration, whichever occurs first.

11.19. USE OF COMMON ELEMENTS. Each Owner and Owner's Permittees may use the Common Elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other Owners. The Board may adopt rules or policies governing or restricting the use of the Common Elements. Each Owner and Owner's Permittees, by the Owner's acceptance of a deed or other instrument of conveyance or assignment to its Unit, agrees to be bound by any such adopted rules or policies. No Owner or Owner's Permittees shall cause, or further, an obstruction of the Common Elements, nor shall anything be stored on any part of the Common Elements, without prior written consent of the Board or if appointed by the Board, the Design Review Committee. Nothing shall be altered, constructed on, or removed from the Common Elements except upon the prior written consent of the Board.

ARTICLE 12 RIGHTS IN THE COMMON ELEMENTS

12.1. OWNERS' EASEMENTS OF ENJOYMENT. Subject to this Article 12, every Owner and its Permittees shall have a non-exclusive right and easement of enjoyment in and to the General Common Elements and those Limited Common Elements the use of which has been allocated to such Owner's Unit (whether separately or together with other Units), plus a right and easement of ingress and egress over, across, and upon the Common Elements for the purpose of entering and exiting such Owner's Unit and Limited Common Elements from and to any public ways, for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to the Owner's Unit and shall be perpetual and indefeasible.

12.2. EXTENT OF OWNERS' EASEMENTS. Subject to the other provisions of this Article, the rights and easements of enjoyment created hereby are subject to the following: the Common Elements may not be used in any manner that violates the statutes, rules, or regulations of any governmental authority with jurisdiction over the Common Elements; and no Owner may place any structure on the

Common Elements. In addition, such rights and easements are subject to the following rights of the Association and other Owners:

12.2.1. The terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations now or subsequently contained in this Declaration and the Map concerning Common Elements; and

12.2.2. The right of the Association to borrow money for any purpose and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest except in accordance with CCIOA; and

12.2.3. The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure; and

12.2.4. The right of the Association to promulgate and publish standards, guidelines, Rules concerning the Units, Common Elements or any other property managed by the Association, as the Association may reasonably determine is necessary or prudent, with which each Member shall strictly comply; and

12.2.5. The right of the Association to grant licenses and leases for the use and enjoyment of the General Common Elements; and

12.2.6. The right of the Association to suspend the voting rights of a Member for any period during which any Assessment against his Unit remains unpaid and, for any reasonable period of time as a result of any infraction of the Governing Documents, after reasonable notice and an opportunity to be heard in accordance with the Policies; and

12.2.7. The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless the same is done in accordance with CCIOA. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads or for other purposes reasonably necessary or useful shall not be deemed a transfer within the meaning of this subsection; and

12.2.8. The right of the Association, through its Board of Directors, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other Persons, and their Permittees, for any purpose(s) the Board of Directors may deem to be useful, beneficial or otherwise appropriate; and

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

12.2.10. The right of an Owner or the Owners of any Unit or Units to which a Limited Common Element is allocated to designate a reasonable location of any easement across such Limited Common Element.

12.3. LIMITED COMMON ELEMENTS.

12.3.1. Limited Common Elements. The Limited Common Elements include the following:

12.3.1.1. Equipment and mechanical rooms depicted on the Map that are allocated for the exclusive use of certain Units,

12.3.1.2. certain Utilities described below,

12.3.1.3. roofs, foundations, columns, girders, beams and supporting elements of the structures that house the Units;

12.3.1.4. the exterior and main or bearing walls of or within the structures housing the Units,

12.3.1.5. any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture that lies partially within and partially outside the designated boundaries of a Unit that serves one or more (but not all) Units.

12.3.2. Utilities. Utilities are categorized by this Declaration as General Common Elements, Limited Common Elements or parts of Units. Utilities that serve only one Unit and are located wholly within such Unit are part of the Unit served. Utilities that serve only one Unit but are not located wholly within such Unit are Limited Common Elements allocated to the Unit served. Utilities that serve more than one but less than all Units are Limited Common Elements allocated to the Units served. Utilities that serve all Units are General Common Elements allocated to all of the Units.

12.3.3. Allocation of Other Limited Common Elements. Limited Common Elements that are limited to, reserved for or that serve only a single Unit are allocated to that Unit. Limited Common Elements that are limited to, reserved for or serve more than one, but less than all, of the Units and that are otherwise not allocated by the provisions of this Declaration are allocated to those Units served.

12.3.4. No Disassociation. Except as otherwise provided in this Declaration, Limited Common Elements shall not be disassociated from a Unit to which they are allocated by the Declarant, the Association or any Owner, and no reference thereto shall be required to be made in any deed, Mortgage, instrument of conveyance, or other instrument describing such Unit.

12.4. GENERAL COMMON ELEMENTS. Each Owner of a Unit has a non-exclusive right to use the General Common Elements without hindering or encroaching upon the lawful rights of other Owners

and in accordance with the Rules. Without the prior written approval of Owners holding sixty-seven percent of the Votes in the Association, no General Common Element may be abandoned, partitioned, subdivided, encumbered, sold or transferred; provided, however, that (a) easements may be granted by Declarant or the Association over General Common Elements, for public or private Utilities or for other public purposes consistent with the intended use of the General Common Elements and (b) leases and licenses to use the General Common Elements may be granted by the Association to Owners or others on arms-length terms and for commercially reasonable consideration, without such approval being required. No reference to General Common Elements shall be required to be made in any deed, Security Interest, instrument of conveyance or other instrument describing the Unit.

12.5. DECLARANT USE OF COMMON ELEMENTS. Easements are hereby granted to and reserved by Declarant on, over, under and through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights or other rights of Declarant, and no Owner shall engage in any activity that will temporarily or permanently interfere with Declarant's easements through the Common Elements.

12.6. PAYMENT OF TAXES OR INSURANCE BY SECURITY INTEREST HOLDERS. Security Interest Holders shall have the right, jointly or singly, to pay taxes or other charges or assessments that are in default and that may be or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

12.7. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS. Portions of the Common Elements may be conveyed or subjected to a Security Interest by the Association only in accordance with CCIOA and this Declaration.

12.8. DESIGNATION OF COMMON ELEMENTS. Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities, as provided in this Declaration and other applicable documents. The Common Elements are not dedicated hereby for use by the general public.

12.9. DUTY TO ACCEPT PROPERTY AND FACILITIES TRANSFERRED BY DECLARANT. The Association shall accept title to any property, including Improvements thereon, as well as personal property, equipment, and easements, transferred to the Association by Declarant, together with responsibility to perform all duties and functions of the Association that are set forth in this Declaration or otherwise assumed by the Association. As of the date of recording of this Declaration, interests that are planned to be transferred by Declarant to the Association are planned to consist only fee simple title to Common Elements and/or easements, in the property described on the attached **Exhibit A**.

ARTICLE 13 DISPUTE RESOLUTION

The provisions of this Article 13 are not intended to waive or alter the applicability of C.R.S. § 13-20-801 *et seq.*, to any action brought by Owners or by the Association, as the term “action” is defined by C.R.S. § 13-20-802.5(1). It is intended that Owners and the Association fully comply with all applicable provisions of both this Article 13 and C.R.S. § 13-20-801 *et seq.*

13.1. REGULATORY DISPUTES. Any claim, controversy, or dispute involving (a) classification by the Board of constituent categories (but not specific dollar amounts themselves) of Common Expenses; (b) proposed Rules and regulations that will have a material adverse effect upon the permitted uses of Owners within the Units; or (c) any other matters upon which the Association and an aggrieved party may mutually agree, shall be resolved by binding arbitration in accordance with the rules established by the Denver office of the American Arbitration Association according to its “fast track” or other available expedited proceedings. The single arbitrator shall be an experienced operator or manager of a common interest community project in the County and/or surrounding area. Judgment upon the determination of the arbitrator may be entered and enforced by the District Court for the County. A condition precedent for any arbitration shall be reconsideration by the Board of the matter in question in an effort to resolve such dispute without the need for binding arbitration.

13.2. OTHER DISPUTES BETWEEN PARTIES. Any controversy, claim, dispute, or other matter in question (collectively, “*Claim*”) between or among the Association, one or more Owners, Declarant, Directors of the Association, or any other person who agrees to be bound by the Dispute Resolution provisions of this Declaration must be determined by binding arbitration in accordance with Colorado’s Uniform Arbitration Act, Colorado Revised Statutes Section 13-22-201, *et seq.*, and the provisions set forth in this Section 13.2. “*Claim*” will not include: (i) any dispute described in subsection Section 13.1 above, (ii) any action by the Association to collect Assessments or other amounts due from any Owner, (iii) any action by the Association to obtain a temporary restraining order or emergency equitable relief and such ancillary relief as a court may deem appropriate to maintain the status quo, (iv) any suit between Owners that does not involve the Declarant or the Association as a party, to the extent such suit asserts a cause of action independent of the Governing Documents, or (v) any action in which an indispensable party is not a party bound by this Declaration unless such indispensable party agrees to be bound by this Declaration for purpose of resolution of the Claim. By accepting the deed to a Unit, each Owner waives any right to a judicial proceeding and a jury trial in connection with the resolution of any Claim. Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a “*Claim*” as defined herein, that the mandatory Dispute Resolution provisions contained in this Article are activated.

13.2.1. Mediation.

i. Any Claim shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by any party. The parties shall endeavor to

resolve Claims between them by mediation that shall be conducted by the arbitrator selected as provided herein in accordance with such arbitrator's mediation rules. Request for mediation shall be filed in writing with the other party(ies) and with the arbitrator. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties.

ii. The parties shall share the mediator's fee and any filing fees pro rata according to the number of parties. The mediation shall be held in the arbitrator's Colorado offices in or physically closest to Vail, Colorado, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

13.2.2. Arbitration.

i. Any Claim shall be subject to and decided by arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with subsection 13.2.1 of this Section 13.2.

ii. Claims that are not resolved by mediation shall be decided by arbitration that shall be conducted by the arbitrator in accordance with the arbitrator's arbitration rules as then currently in effect. The demand for arbitration shall be filed in writing with the other party(ies) and with the arbitrator.

iii. The parties shall share the arbitrator's fee and any filing fees pro rata according to the number of parties.

iv. A demand for arbitration shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. All Claims are subject to the laws, rules and regulations of the State of Colorado and its political subdivisions, including the Construction Defect Reform Act, Colorado Revised Statutes §13-20-801 et seq. with respect to any claims asserted for construction or design defects.

v. Except as specifically provided below, no arbitration of any Claim shall include, by consolidation or joinder or in any other manner, any person not an Owner, Declarant, the Association or a Director of the Association, except by written consent of one or more parties and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any Claim not described in the written consent or with a person or entity not named or described therein. Notwithstanding the foregoing, Declarant shall have the right to join its architects, engineers, contractors, subcontractors, materialmen, and any other construction professionals rendering services, performing work, or providing materials for the Project in any arbitration to the extent Declarant obtains the consent of such other parties or has the right to force joinder of such other parties.

vi. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

vii. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The arbitrator shall award the prevailing party all reasonable costs and expenses, including attorney fees, costs and expert witness fees.

13.2.3. Arbitrator. The parties may agree on an arbitrator. If they are unable to agree, arbitration and mediation will be conducted by the Denver office of the American Arbitration Association, or its successor, utilizing its rules appropriate to the subject matter of the dispute. If the American Arbitration Association no longer exists and is without successor, the parties will contact the Judicial Arbiter Group, the Colorado Home Builders Association/Better Business Bureau Alternative Dispute Program, or other agreed upon dispute resolution organization or service (in that order of priority) and will use its procedures to select an arbitrator.

13.3. INITIATION OF LITIGATION BY THE ASSOCIATION. In addition to compliance with the foregoing alternative dispute resolution procedures set forth in this Section 13.3, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Owners holding sixty-seven percent (67%) of the votes in the Association, except that no such approval shall be required for actions or proceedings: (i) initiated to enforce the provisions of this Declaration, including collection of Assessments and foreclosure of liens; (ii) initiated to challenge ad valorem taxation or condemnation proceedings; (iii) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or (iv) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

13.4. CONSENSUS FOR ASSOCIATION ACTION. The Association shall not commence any action, mediation or arbitration unless at least a majority of the Board of Directors and the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated consent to the commencement of proceedings. The Association may seek such consent from the Owners, however, only after it delivers notice or ballots to all Members of the Association in accordance with the procedures set forth in the Bylaws with respect to meetings of Members. The delivery of the notices or ballots shall also include written materials that provide:

- (a) A description of the Claim;
- (b) A copy of Declarant's or any other party's written response thereto, including any settlement proposal;
- (c) A statement advising Owners of their duties to disclose to prospective purchasers and lenders the Claim that the Association seeks to assert against Declarant;
- (d) A statement that any recovery from the action may not result in receipt of sufficient or any funds to pay all costs of remedying the Claim as estimated by experts retained by the Association;
- (e) An estimate of the cost to the Association in prosecuting the cause of action; and

(f) A description of the agreement with the attorneys whom the Board of Directors proposes to retain to prosecute the cause of action.

13.5. LIABILITY FOR FAILURE TO MAINTAIN AN ACTION AGAINST DECLARANT, DEVELOPER OR CONTRACTOR. No Director or officer of the Association shall be liable to any person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a claim against Declarant, Developer or Contractor if the following criteria are satisfied: (a) the Director or officer was acting within the scope of his or her duties; (b) the Director or officer was acting in good faith; and (c) the act or omission was not willful, wanton or grossly negligent.

13.6. BINDING EFFECT. This Article 13 and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction in the County to the fullest extent permitted under the laws of the State of Colorado.

13.7. UTILIZATION OF FUNDS RESULTING FROM THE CLAIM. In the event the Association receives funds as a result of any settlement, mediation, arbitration or judgment based on the Claim, after payment of fees and costs incurred in connection with prosecution of the Claim, the Association shall: (a) deposit the proceeds in a special, interest-bearing account; and (b) utilize the proceeds only for the purpose of performing remedial or repair work on the conditions that were the subject of the Claim or otherwise for purposes of remedying the Claim.

13.8. EXCLUSIVE REMEDY. The provisions contained in this Article shall be the sole and exclusive remedy that the Association and other parties shall have against Declarant for any Claim. Should any party commence litigation or any other action against any other Party, in violation of the terms of this Article, such party shall reimburse the costs and expenses, including reasonable attorney's fees, incurred by the other party seeking dismissal of such litigation or action.

13.9. AMENDMENT. This Article 13 shall not be amended unless such amendment is approved by Declarant and a majority of the Board of Directors and by the Owners to whom at least sixty-seven percent (67%) of the votes in the Association are allocated. The rights of Declarant under this Article 13 are not tied to the Period of Declarant Control and do not lapse or expire at the end of the Period of Declarant Control, it being expressly stated that this Article 13 is intended to create rights in favor of Declarant and that the rights and interests of Declarant in the Community extend beyond the Period of Declarant Control. Notwithstanding the foregoing, commencing twenty years after the recording of this Declaration, the Declarant's consent to a proposed amendment to Article 13 will be implied if notice of a proposed amendment is mailed, certified mail, return receipt requested, to the last known address of Declarant or any principal therein, and written objection to the amendment has not been received by the Association within 60 days of the date of such mailing. No Amendment of Article 13 shall have retrospective effect as to rights, obligations, Claims as related to any party that took place or accrued or arose prior to such Amendment without the written consent of such party.

13.10. VESTED RIGHTS OF PARTY. Notwithstanding any amendment of this Article 13, any party as defined in Article 13 who has performed, acted or been involved in any work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein (i) shall be deemed to have a vested right in the terms of this Article 13 as in effect at the time of such any work, contract, act, omission, negligence, breach, violation of duty, or other

action with respect to the Community or any right or interest therein, with no applicability of the terms of any subsequent amendment; (ii) to the extent of any express or implied contract relating to such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein, shall be deemed to have incorporated into such contract the terms of this Article 13 as enacted and in effect at the time of such contracting with no applicability of the terms of any subsequent amendment; (iii) shall expressly be entitled to the enforce the provisions of this Article 13 as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein, with no applicability of the terms of any subsequent amendment; (iv) shall not be affected by any subsequent amendment to Article 13; and (v) any subsequent amendment to Article 13 shall not alter such party's right and entitlement to enforce the terms of Article 13 as enacted and in effect at the time of such work, contract, act, omission, negligence, breach, violation of duty, or other action with respect to the Community or any right or interest therein with no applicability of the terms of any subsequent amendment. The rights and provisions of this Article 13 may be altered as to any such party only by the written consent of such party.

ARTICLE 14 GENERAL PROVISIONS

14.1. SEVERABILITY. All provisions of this Declaration, the Articles and the Bylaws are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions that shall remain in full force and effect.

14.2. CONFLICT OF PROVISIONS. In case of any conflict between this Declaration and a Supplemental Declaration, this Declaration shall control. In case of any conflict between this Declaration and the Articles or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles and the Bylaws of the Association, the Articles shall control.

14.3. CONFLICT WITH THE ACT. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with CCIOA, the terms or provisions of CCIOA shall control and govern. In case of any such conflict or inconsistency, the applicable terms and provisions contained in this Declaration shall, to the extent possible, be construed in accordance with CCIOA, and any conflict with or violation of CCIOA by any terms or provisions of this Declaration shall be affect, void, or render unenforceable any other term or provision of this Declaration (which shall be in full force and effect in accordance with their terms).

14.4. ANNEXATION; WITHDRAWAL. Additional property may be annexed to this Declaration with the consent, at the time such annexation is to be effective, of Members casting sixty-seven percent (67%) of the Association votes and with the consent, at the time such annexation is to be effective, of the owner of the property to be annexed.

14.4.1. Declarant hereby reserves the right, from time to time, to record one or more documents in order to clarify the effect of any annexation(s), including any matters contained in subsection 14.4. Each such document(s), if any such document(s) are recorded by Declarant in its discretion, may state the legal description(s) of any property that has been annexed, and may

include such other provisions that Declarant, in its discretion, may determine in order to clarify any matter having to do with annexation of such property to this Declaration.

14.4.2. Except as otherwise specifically stated in the document pursuant to which property is annexed, all provisions of this Declaration, including (as to Units), those provisions regarding obligations to pay Assessments to the Association and any right to cast votes as Members, shall apply to annexed property immediately upon the effective date of the annexing document (which shall constitute the date of recording thereof unless otherwise stated in such document). Each annexation to this Declaration, if any, shall be deemed to constitute an amendment to this Declaration.

14.4.3. The property that is described on the attached **Exhibit A-1** and each portion of the Community that is annexed to this Declaration by Declarant shall be subject to a right of withdrawal by Declarant. Such withdrawal may be accomplished, if at all, in accordance with CCIOA. However, Declarant's right to withdraw each such portion of the Community shall expire and terminate, as to each portion of the Community, ten (10) years after the initial recording of this Declaration.

14.5. SUBDIVISION OR REPLATTING OF UNITS. Declarant hereby reserves the right to subdivide or replat any Unit(s) owned by Declarant in the Community. Without limiting the generality of the foregoing, Declarant reserves the right to move any Unit line(s) on Unit(s) owned by Declarant, for the purpose of accommodating Improvements that are constructed or are to be constructed. The rights provided for in this Section shall terminate automatically upon termination of the Special Declarant Rights, as provided in Section 1.43 hereof. No Unit may be further subdivided from that existing at the time such Unit becomes subject to this Declaration, except by, or with the consent of, Declarant.

14.6. DECLARANT'S USE. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Units and the Common Elements such facilities as Declarant deems reasonably necessary or incidental to the construction and sale of Units and development and construction of Improvements. The foregoing includes locating, maintaining and relocating management offices, signs, model units and sales offices, in such numbers, of such sizes, and at such locations it determines in its reasonable discretion from time to time. Any real estate used as a sales office, management office, or a model, shall be a Unit or Common Elements, as designated in this Declaration or any other recorded document. Further, nothing contained in this Declaration shall limit the rights of Declarant or require Declarant to obtain approvals:

14.6.1. to excavate, cut, fill or grade any property (with the consent of the Owner thereof) or to construct, alter, demolish or replace any Improvements;

14.6.2. to use any Improvements on any property (with the consent of the Owner thereof) as a construction, management, model home or sales or leasing office in connection with the development, construction or sale of any property; and/or

14.6.3. to require Declarant to seek or obtain any approvals under this Declaration for any such activity.

14.7. DURATION, REVOCATION, AND AMENDMENT.

14.7.1. Each and every provision of this Declaration shall run with and bind the land perpetually from the date of recording of this Declaration. Except as otherwise provided in this Declaration (including Section 14.4 of this Declaration), this Declaration may be amended by the affirmative vote or agreement of Members holding at least sixty-seven percent (67%) of the Allocated Interests.

14.7.2. Notwithstanding anything to the contrary contained in this Declaration, this Declaration may be amended in whole or in part, at any time from time to time, by Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to comply with the requirements, standards, or guidelines of any of the Agencies or of recognized secondary mortgage markets. Such right of amendment shall terminate automatically as provided in Section 1.43 of this Declaration.

14.7.3. Notwithstanding anything to the contrary contained in this Declaration, this Declaration, may be amended in whole or in part, at any time from time to time, by Declarant without the consent or approval of any other Owner, any Security Interest Holder, or any other Person, in order to correct clerical, typographical, or technical errors. Such right of amendment shall terminate automatically as provided in Section 1.43 of this Declaration.

14.7.4. Except as to amendments that may be made by Declarant, amendments to this Declaration may be prepared, executed, recorded, and certified by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association. Such certification shall, in the case of an amendment requiring the approval of Owners, certify that the Association has received the requisite approvals. Amendments to this Declaration that may be made by Declarant pursuant to this Declaration or as permitted by CCIOA, may be signed by Declarant and shall require no other signatory.

14.8. REGISTRATION OF MAILING ADDRESS. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest, shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such Person at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the address of such Owner's Unit. All notices, demands, or other notices intended to be served upon the Board of Directors or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, c/o Town of Vail, 75 S. Frontage Rd. W., Vail, CO 81657, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

14.9. HUD OR VA APPROVAL. During the Period of Declarant Control, the following actions shall require the prior approval of HUD or VA if, at the time any such action is taken, HUD has insurance or VA has a guarantee(s) on one or more first Security Interests and HUD or VA require such approval: annexation of additional real property (if Declarant desires to obtain HUD or VA approval of the property that is being annexed and HUD or VA require such approval); amendment of this Declaration, except as provided in Section 14.4, and subsections 14.7.2 and 14.7.3 hereof, termination of this Community; dedication of Common Elements; or merger or consolidation of the Association, except as provided in Section 3.13 of this Declaration.

14.10. EMINENT DOMAIN. The taking by eminent domain of a Unit(s) or Common Elements, or any portion thereof, shall be done in accordance with applicable law, including CCIOA.

14.11. INDEMNIFICATION. To the extent (i) permitted by applicable law and (ii) not covered by the insurance required under Article 6 above, each Owner other than Declarant (“*Indemnifying Owner*”), by taking title to a Unit, is hereby deemed to covenant to indemnify, defend, and hold harmless the Association, Declarant, each other Owner, its Security Interest Holder, and their respective partners, officers, directors, shareholders, members, managers, employees, and agents (each, an “*Indemnified Party*”) from and against any and all claims, actions, damages, liabilities and demands asserted by third persons (other than Indemnified Parties), including those for loss of life, personal injury and property damage, occasioned by or arising directly or indirectly, out of or in connection with the use, occupancy, operation or ownership (as applicable) by such Owner of his or her Unit or the easement areas associated with such Unit, or the failure of such Owner to perform any obligation with respect to those easement areas associated with such Owner’s Unit that such Owner is required to operate, maintain, and/or repair under the terms of this Declaration. An Indemnified Party shall provide the Indemnifying Owner with prompt notice of any claim or other matter for which the Indemnified Party may seek indemnity under this Article; provided, however, that the failure to provide such notice shall relieve the Indemnifying Owner of its indemnity obligations only to the extent that the Indemnifying Owner is damaged or prejudiced by such failure. The Indemnifying Owner or its covering insurer shall defend the Indemnified Party with respect to any such claim at the Indemnifying Owner’s expense, with attorneys selected by the Indemnifying Owner who may also represent the Indemnifying Owner. If the Indemnified Party retains separate attorneys for its defense, it shall do so at its own expense. The Indemnifying Owner shall have sole right to conduct such defense (including decisions concerning the forum) and settle any claim, suit, proceeding, or other matter brought by the third party, provided that the Indemnified Party is released from any liability with respect to such claim. The Indemnified Party shall cooperate with the Indemnifying Owner in the defense of any claim, including the provision of documents and witnesses.

14.12. NO WAIVER OF GOVERNMENTAL IMMUNITY. No provision in this Declaration shall be construed to be a waiver of Governmental Immunity (as described in C.R.S. § 24-10-101, *et seq.*) by Declarant as to amounts or types of liability for the use, occupancy or operation of any Unit or the Common Elements.

14.13. LIMITATION ON LIABILITY. The Association, the Board of Directors, the Design Review Committee, Declarant, and the officers, directors, managers, members, partners, agents and employees of the same, shall not be liable to any Person for any action or for any failure to act unless the

action or failure to act was not in good faith and was done or withheld with malice. The release and waiver set forth in Section 14.16 shall apply to this Section.

14.14. NO REPRESENTATIONS, GUARANTIES OR WARRANTIES. No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, the Association, the Board of Directors, the Design Review Committee, or by any of their officers, directors, members, partners, agents or employees, in connection with any portion of the Community, or any Improvement, its or their physical condition, structural integrity, freedom from defects, freedom from hazardous or toxic materials, substances or gases, zoning, compliance with applicable laws, fitness for intended use, or view, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing. The release and waiver set forth in Section 14.16 shall apply to this Section.

14.15. DISCLAIMER REGARDING SAFETY. DECLARANT, DEVELOPER, CONTRACTOR, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, HEREBY DISCLAIM ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY. BY ACCEPTING A DEED TO PROPERTY WITHIN THE COMMUNITY, EACH OWNER ACKNOWLEDGES THAT DECLARANT, DEVELOPER, CONTRACTOR, THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE DESIGN REVIEW COMMITTEE, AND THEIR OFFICERS, DIRECTORS, MEMBERS, PARTNERS, AGENTS AND EMPLOYEES, ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED IN THIS DECLARATION, OR IN THE ARTICLES, BYLAWS, RULES AND REGULATIONS OR POLICIES AND PROCEDURES OF THE ASSOCIATION, AND ARE NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY. THE RELEASE AND WAIVER SET FORTH IN SECTION 14.16 SHALL APPLY TO THIS SECTION.

14.16. WAIVER. By acceptance of a deed to a Unit, each Owner hereby releases, waives, and discharges Declarant, the Association, the Board of Directors, the Design Review Committee, and their respective officers, directors, members, partners, agents and employees, heirs, personal representatives, successors and assigns, from all losses, claims, liabilities, costs, expenses, and damages, arising directly or indirectly from any hazards, disclosures or risks set forth in this Declaration, including those contained in Sections 14.13, 14.14 and 14.15.

14.17. HEADINGS. The Article, Section and subsection headings in this Declaration are inserted for convenience of reference only, do not constitute a part of this Declaration, and in no way define, describe or limit the scope or intent of this Declaration or any of the provisions hereof.

14.18. GENDER. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

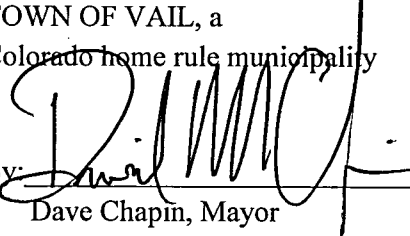
14.19. RUN WITH LAND; BINDING UPON SUCCESSORS. The benefits, burdens and all other provisions contained in this Declaration shall be covenants running with and binding upon this Community and all real property and Improvements that are now or hereafter become a part thereof. The benefits, burdens and all other provisions contained in this Declaration shall be binding upon, and inure

to the benefit of Declarant, the Association and all Owners, and upon and to their respective heirs, personal representatives, successors and assigns.


IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 18th day of December, 2017.

DECLARANT:

TOWN OF VAIL, a
Colorado home rule municipality

By: 
Dave Chapin, Mayor

ATTEST:


Patty McKenny, Town Clerk

**EXHIBIT A
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF CHAMONIX VAIL COMMUNITY**

(Community)

Parcel B a resubdivision of Tract D, a resubdivision of Vail Das Schone Filing No. 1, a resubdivision of
Parcels A & B, Town of Vail County of Eagle, State of Colorado

EXHIBIT A-1
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF CHAMONIX VAIL COMMUNITY

(Property Subject to Withdrawal)

Parcel D, Chamonix Vail Community, according to the Declaration of Covenants, Conditions and Restrictions to which this is an exhibit and the Townhouse Plat recorded simultaneously herewith in the records of the Clerk and Recorder of the County of Eagle, State of Colorado, as amended from time to time.

EXHIBIT B
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF CHAMONIX VAIL COMMUNITY

(Assessments)

Chamonix Vail
HOA Ownership % & Year 1 Initial Assessment

9.20.17

<u>Building</u>	<u>Unit</u>	<u>Unit Type</u>	<u>Address</u>	<u>Unit</u>		<u>Total Year 1</u>	
				<u>Legal Description</u>	<u>% Ownership</u>	<u>Monthly Assessment</u>	
1	1	2-1	2387 Lower Traverse Way	Unit 1	2.370%	\$	221.35
1	2	3-2	2387 Lower Traverse Way	Unit 2	3.290%	\$	307.28
1	3	2-2	2387 Lower Traverse Way	Unit 3	2.610%	\$	243.77
2	4	2-1	2373 Lower Traverse Way	Unit 4	2.370%	\$	221.35
2	5	3-2	2373 Lower Traverse Way	Unit 5	3.290%	\$	307.28
2	6	2-2	2373 Lower Traverse Way	Unit 6	2.610%	\$	243.77
3	7	2-2	2361 Lower Traverse Way	Unit 7	2.610%	\$	243.77
3	8	3-2	2361 Lower Traverse Way	Unit 8	3.290%	\$	307.28
3	9	2-1	2361 Lower Traverse Way	Unit 9	2.370%	\$	221.35
3	10	3-2	2361 Lower Traverse Way	Unit 10	3.290%	\$	307.28
4	11	2-1	2345 Lower Traverse Way	Unit 11	2.370%	\$	221.35
4	12	3-2	2345 Lower Traverse Way	Unit 12	3.290%	\$	307.28
4	13	2-2	2345 Lower Traverse Way	Unit 13	2.610%	\$	243.77
10	14	3-1	2401 Upper Traverse Way	Unit 14	3.220%	\$	300.74
10	15	3L-2	2401 Upper Traverse Way	Unit 15	4.145%	\$	387.13
10	16	3L-2	2401 Upper Traverse Way	Unit 16	4.145%	\$	387.13
10	17	3-1	2401 Upper Traverse Way	Unit 17	3.220%	\$	300.74
9	18	3-1	2381 Upper Traverse Way	Unit 18	3.220%	\$	300.74
9	19	3L-2	2381 Upper Traverse Way	Unit 19	4.145%	\$	387.13
9	20	3-1	2381 Upper Traverse Way	Unit 20	3.220%	\$	300.74
8	21	3-1	2363 Upper Traverse Way	Unit 21	3.220%	\$	300.74
8	22	3L-2	2363 Upper Traverse Way	Unit 22	4.145%	\$	387.13
8	23	3-1	2363 Upper Traverse Way	Unit 23	3.220%	\$	300.74
7	24	3-1	2347 Upper Traverse Way	Unit 24	3.220%	\$	300.74
7	25	3-2	2347 Upper Traverse Way	Unit 25	3.290%	\$	307.28
7	26	3-1	2347 Upper Traverse Way	Unit 26	3.220%	\$	300.74
6	27	3-1	2333 Upper Traverse Way	Unit 27	3.220%	\$	300.74
6	28	3-2	2333 Upper Traverse Way	Unit 28	3.290%	\$	307.28
6	29	3-1	2333 Upper Traverse Way	Unit 29	3.220%	\$	300.74
5	30	2-2	2315 Lower Traverse Way	Unit 30	2.610%	\$	243.77
5	31	3-2	2315 Lower Traverse Way	Unit 31	3.290%	\$	307.28
5	32	2-1	2315 Lower Traverse Way	Unit 32	2.370%	\$	221.35
Total					100.000%	\$	112,076.00

EXHIBIT C
TO
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF CHAMONIX VAIL COMMUNITY

(Certain Title Exceptions)

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

Any loss or damage, including attorney fees, by reason of the matters shown below:

1. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof.
2. Easements or claims of easements, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the Public Records or attaching subsequent to the effective date hereof, but prior to the date of the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. Right of proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises as reserved in united states patent recorded august 11, 1900 in Book 48 at Page 236.
8. An undivided 1/2 interest in and to the oil, gas and mineral rights therein as reserved in Warranty Deed from Peter E. Katsos and Catherine Katsos to Gust Kiahtipes and Nick Kiahtipes, recorded January 2, 1960 in Book 165 at Page 133 as Reception No. 93069.
9. Covenants, conditions, restrictions, notes; easements, reservations and rights of ways as shown on the Plat of Vail Das Schone Filing No. 1 filed July 7, 1965 at Reception No. 101700; and the Plat of A Resubdivision of Vail Das Schone Filing No. 1 filed February 18, 1966 at Reception No. 103251.
10. Covenants, conditions, restrictions and easement provisions contained in the Protective Covenants recorded July 7, 1965, in Book 190 at Page 559 as Reception No. 101701; Amendment to Protective Covenants recorded May 22, 1968 in Book 212 at Page 829 as Reception No. 108225 and re- recorded June 19, 1968 in Book 212 at Page 966 as Reception No. 108367; and Amendment to Protective Covenants recorded February 16, 1970 in Book 217 at Page 78 as Reception No. 112635.

11. Terms, conditions, restrictions, burdens and obligations contained in Temporary Easement granted to Vail Village West and Sanitation District in instrument recorded December 7, 1981 in Book 332 Page 991 as Reception No. 229348
12. Terms, conditions, restrictions, burdens and obligations contained in Easement Deed granted to Vail Village West Water and Sanitation District in instrument recorded December 7, 1981 in Book 332 at Page 992 as Reception No. 229349.
13. Covenants, conditions, restrictions, notes; easements, reservations and rights of ways as shown on the Plat of a Resubdivision of Tract D, a Resubdivision of Vail Das Schone, Filing No. 1 recorded March 26, 1987 in Book 459 at Page 798 as Reception No. 356028.
14. Terms, conditions, provisions, burdens and obligations of Trench, Conduit, and Vault Agreement recorded August 2, 2010 at Reception No. 201015082.
15. Covenants, conditions, restrictions, notes; easements, reservations and rights of ways as shown on the Plat of a Resubdivision of Tract D, a Resubdivision of Vail Das Schone Filing No. 1, a Resubdivision of Parcels A & B, recorded June 15, 2010 at Reception No. 201011616, and Correction Plat thereof recorded May 23, 2011 at Reception No. 201109106.
16. Terms, conditions, provisions, burdens and obligations of Trench, Conduit, and Vault Agreement recorded April 29, 2016 at Reception No. 201605980.
17. Terms, conditions, provisions, burdens and obligations of Holy Cross Energy Underground Right- of-Way Easement recorded May 16, 2016 at Reception No. 201606776.
18. Terms, conditions, restrictions, burdens and obligations contained in the Development Agreement made by and between the Town of Vail and Triumph Development West, LLC recorded April 18, 2017 at Reception No. 201706803.
19. Terms, conditions, provisions, burdens and obligations of Trench, Conduit, and Vault Agreement recorded April 26, 2017 at Reception No. 201707349.
20. Terms, conditions, restrictions, burdens and obligations contained in the Grant of Easement to Comcast of Colorado, VI, LLC recorded May 1, 2017 at Reception No. 201707817.
21. Covenants, conditions, restrictions, notes; easements, reservations and rights of ways; party walls and party wall rights as shown on Plat of Chamonix Vail Community (to be recorded).
22. Covenants, conditions, restrictions, easement provisions, party walls and party wall rights contained in the Declaration of Covenants, Conditions and Restrictions of Chamonix Vail Community (to be recorded).
23. Covenants, conditions, and restrictions contained in the Deed Restriction Agreement for the Occupancy and Transfer of Chamonix Vail Residential Dwelling Units (to be recorded).