



EXHIBIT 'C'

DECLARATION OF COVENANTS  
FOR  
RED DRAW DEED RESTRICTED CONDOMINIUM UNITS

THIS DECLARATION FOR THE RED DRAW DEED RESTRICTED CONDOMINIUM UNITS (hereinafter the "Declaration") shall be effective upon its recordation, and is made by The Archdiocese of Denver, a Colorado corporation sole, as trustee and for the benefit of St. Clare of Assisi Catholic Parish, a separate public juridic person under 1983 Code of Canon Law of the Roman Catholic Church ("Declarant"). Declarant is the owner of certain real property in Eagle County, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). Declarant hereby makes the following grants, submissions, and declarations:

211/206-

OF COVENANTS  
ARTICLE 1 IMPOSITION

Section 1.1 Purpose. The purpose of this declaration is to create a residential-planned community (the "Project") pursuant to the Colorado Common Interest Ownership Act.

Section 1.2 Intention of Declarant. Declarant desires to (a) protect the value and desirability of the Project, (b) further a plan for the improvement, sales, and planned community ownership of the Project, (c) create a harmonious and attractive residential development within the Project, and (d) promote and safeguard the health, comfort, safety, convenience, and welfare of the owners of the condominium units located within the Project.

Section 1.3 Development and Use. The Project presently consists of sixteen (16) condominium units ("Unit" or "Units") and the Project may in the future consist of a maximum of sixty (60) deed-restricted, affordable Units pursuant to the terms provided for herein. No additional Units may be established on the Property by subdivision of existing Units or otherwise.

Section 1.4 Declaration. To accomplish the purposes and intentions recited above, Declarant hereby submits the Property, together with all improvements, appurtenances, and facilities relating to or located on the Property now and in the future, to the provisions of the Act, and hereby imposes upon all of the Property, the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions of this Declaration below, and Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, rented, occupied, and improved subject to the provisions of this Declaration.

Section 1.5 Covenants Running With the Land. All provisions of this Declaration shall be deemed to be covenants running with the land, or equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Condominium Unit Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

Return to :  
Brian E. O'Reilly, P.C.  
PO Box 5780,  
Avon, CO 81620

**Section 1.6 Affordable Housing Restrictions.** In order to provide housing for certain permanent residents of the area, all of the Units will be restricted in the manners set forth in the Master Deed Restriction Agreement for the Occupancy and Resale of the Red Draw Deed Restricted Condominium Units. Such Master Deed Restriction Agreement contains restrictions on the use, occupancy, and alienation of the Units, and on the amount for which a unit may be sold, or on the amount that may be received by a Unit Owner on the sale, condemnation, or casualty loss to the Unit or to the Common Interest Community or on termination of the common interest community, and, pursuant to the provisions of CRS 38-33.3-205(1)(l), the provisions of the Master Deed Restriction Agreement are hereby incorporated herein by this reference as if set forth in full.

## ARTICLE 2 DEFINITIONS

The following words, when used in this Declaration or any Supplemental Declaration, unless inconsistent with the context of this Declaration shall have the following meanings:

**Section 2.1 "Act"** means the Colorado Common Interest Ownership Act, as amended from time to time.

**Section 2.2 "Agency"** means any agency or corporation such as the Department of Housing and Urban Development, Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or Federal Housing Administration that purchases, guarantees or insures residential mortgages.

**Section 2.3 "Annual Assessment" or "Annual Assessments"** means the assessments levied by the Red Draw Condominium Owners Association on the Unit Owners by virtue of their ownership of the Condominium Units.

**Section 2.4 "Articles" or "Articles of Incorporation"** means the Articles of Incorporation for the Association filed with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.

**Section 2.5 "Assessments"** means the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expenses, as defined under the Act.

**Section 2.6 "Association"** means the Red Draw Condominium Owners Association, a Colorado nonprofit corporation, and its successors and assigns. The Association shall act through its Executive Board, unless a vote of the Owners is otherwise specifically required by this Declaration or by the Association's Articles or Bylaws.

Section 2.7 "Association Documents" means this Declaration, the Articles and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted pursuant to such documents by the Association.

Section 2.08 "Buildings" means and refers to the buildings (including all fixtures and improvements contained within them) in which Units are located. Each of the Buildings may hereinafter be individually referred to as a "Building."

Section 2.9 "Bylaws" means the Bylaws adopted by the Association, as amended from time to time.

Section 2.10 "Common Area" or "Common Elements" means all portions of the Project except the Condominium Units.

Section 2.10.1 "General Common Elements" means all tangible property of the Project except the Units and the Limited Common Elements.

Section 2.10.2 "Limited Common Elements" means those parts of the Common Elements which are either limited to or reserved in this Declaration, in a Map, or by action of the Association, for the exclusive use of an Owner, or are limited to and reserved for the common use of more than one but less than all Owners.

Section 2.11 "Common Expenses" or "Assessments" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the Common Area and the Exterior Maintenance Area; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.12 "Condominium Unit", " Condominium Units" or "Unit" shall refer to the condominium units created by virtue of the recording of this Declaration.

Section 2.13 Except as otherwise provided by this Declaration:

2.13.1 If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finished flooring and any other materials constituting any part of the walls, floors or ceilings are a part of the common elements.

2.13.2 If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements.

2.13.3 Subject to the provisions of paragraph (b) of this subsection (1), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

2.13.4 Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies and patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Section 2.14 "Declarant" means The Archdiocese of Denver, a Colorado corporation sole, as trustee for the benefit of St. Clare of Assisi Parish, a public juridic person under the law of the Roman Catholic Church, and its successors and assigns. St. Clare of Assisi Parish is the beneficial owner of the Property and the owner of the Project. As such, St. Clare of Assisi Parish bears responsibility for all Declarant Obligations hereunder or otherwise associated with the Project.

Section 2.15 "Declaration" means this Declaration for Red Draw Deed Restricted Condominium Units, as recorded in the real property records of Eagle County, Colorado.

Section 2.16 "Director" means a member of the Executive Board.

Section 2.17 "Default Assessment" means the Assessments levied by the Association pursuant to Section 10.8 below.

Section 2.18 "Eligible Mortgage Holder" means a First Mortgagee or any insurer or guarantor of a First Mortgage, or any Agency, which has notified the Association in writing of its name and address and its status as the holder, insurer or guarantor of a First Mortgage. Such notice shall be deemed to include a request that the Eligible Mortgage Holder be given the notices and other rights described in Article 19 below, regardless of whether such Article requires notice to such party.

Section 2.19 "Executive Board" or "Board of Directors" or "Board" means and refers to the governing body of the Association elected or appointed to perform the obligations of the Association relative to the operation, maintenance, and management of the Project and all improvements on the Property.

Section 2.20 Pursuant to CRS 38-33.3-205(1), "Expansion Property" means the real property located in Eagle County, Colorado, more particularly described on Exhibit B attached hereto and incorporated herein, which Declarant may subject to this Declaration by one or more duly recorded Supplemental Declarations.

Section 2.21 "Exterior Maintenance Area" means the exterior of any Condominium Unit, land surrounding any Condominium Unit, including any exterior driveways, sidewalks, and parking spaces serving the Unit, all as more fully described in Section 5.1 below.

Section 2.22 "First Mortgage" means an unpaid and outstanding Mortgage which encumbers a Unit, and which has priority of record over all other recorded liens except those for real property taxes, other governmental liens made superior by statute (such as general ad valorem tax liens and certain assessments).

Section 2.23 "First Mortgagee" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.24 "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Project.

Section 2.25 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to a Management Agreement to perform management services for the Project.

Section 2.26 "Master Deed Restriction Agreement" means the Master Deed Restriction Agreement for the Occupancy and Resale of Red Draw Deed Restricted Condominium Units.

Section 2.27 "Member" shall mean every person or entity that holds membership in the Association.

Section 2.28 "Mortgage" shall mean any mortgage, deed of trust, or other document pledging any Unit or interest therein as security for payment of a debt or other obligation.

Section 2.29 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.30 "Owner" means any record owner (including Declarant, and including a contract seller, but excluding a contract purchaser), whether a natural person or persons, or an entity, of a fee simple title interest in and to any Unit; excluding, however, any record owner with an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest in the Unit pursuant to foreclosure or any proceedings in lieu of foreclosure).

Section 2.31 "Plat" or "Map" means the subdivision plat(s) recorded with respect to the Property that creates any Units, and all supplements and amendments thereto. The Plat contains or will contain a description of all recorded easements and licenses appurtenant to the Property or to which the Common Interest Community is or may become subject by virtue of a reservation in the Declaration. The Map is recorded as Reception Number 200807053 in the real property records of Eagle County, Colorado.

Section 2.32 "Project" shall mean the planned community created by this Declaration, consisting of the Property, the Units, and any other improvements constructed on the Property and as shown on the Plat Map, including any additional units constructed and made subject to the Declaration.

Section 2.33 "Property" means and refers to that real property described on Exhibit A attached to this Declaration.

Section 2.34 "Sharing Ratio" means the percentage allocation of Assessments to which an Owner's Unit is subject as set forth in Exhibit C attached hereto and made a part hereof.

Section 2.35 "Special Assessment" means an assessment levied pursuant to Section 10.8 below on an irregular basis.

Section 2.36 "Red Draw" refers to all of the real property in Eagle County, Colorado subject to this Declaration.

Section 2.37 "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, designating such party as a Successor Declarant.

Section 2.38 "Supplemental Declaration" means an instrument which subjects any part of the Expansion Property to this Declaration, as more fully provided in Article 14 below.

Section 2.39 "Supplemental Plat" means a supplemental plat of the Project which may depict a part of the Expansion Property becoming subject to this Declaration through a Supplemental Declaration, as more fully provided in Article 14 below.

Section 2.40 "Unit" means a Condominium Unit subject to this Declaration, together with all improvements therein, including its interests in the Common Elements.

Section 2.41 Additional Definitions. Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

### ARTICLE 3 NAME, DIVISION INTO RESIDENTIAL UNITS

Section 3.1 Name. The name of the Project is the Red Draw Deed Restricted Condominium Units.

Section 3.2 Association. The name of the association is the Red Draw Condominium Owners Association. Declarant has caused the Association to be incorporated under the laws of the State of Colorado as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

Section 3.3 Number of Units; Development Rights. The number of Units initially submitted to this Declaration is sixteen (16). Pursuant to the provisions of CRS 38-33.3-205, Declarant reserves the right for itself and any Successor Declarant to construct up to sixty (60) additional deed-restricted units, subject to the set forth herein, and to expand or change the Common Areas to accommodate the construction of such additional units. Such construction must be

commenced within seven (7) years of the date of recording of this Declaration, which right may be extended by the recording of an appropriate resolution of the Board of County Commissioners. No assurances are made with respect to whether or not the Declarant's development rights may be exercised with respect to different parcels of real estate at different times and no assurances are made with respect to the boundaries of the property or properties on which development rights may be exercised or the order in which those portions may be subjected to such development rights. If any development rights are exercised by Declarant on any portion of real estate subject to development rights, such development rights may or may not be exercised in all or in any portion of the remainder of that real estate.

Section 3.4 Identification of Units. The identification number of each Unit is as shown by its Unit Number on the Plat.

Section 3.5 Description of Units.

3.5.1 Each Unit shall be inseparable and may be leased, devised, or encumbered only as a single residence.

3.5.2 Title to a Unit may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Unit in which he owns an interest. For all other purposes herein, there shall be deemed to be only one Owner for each Unit. The parties, if more than one, having the ownership of a Unit shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Unit in which they own an interest.

3.5.3 Any contract of sale, deed, lease, mortgage, will or other instrument affecting title to a Unit may describe it by its unit number, Red Draw Deed Restricted Condominium Units, County of Eagle, State of Colorado, according to the Plat thereof recorded at Reception No. 200807053 and any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and any recorded amendment and supplement hereto (with applicable recording information inserted therein).

3.5.4 Each Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Units as provided pursuant to Colorado Revised Statutes subsections 39-1-103(10) and 38-33.3-105(2).

3.5.5 No Owner of a Unit shall bring any action for partition or division of the Common Area.

ARTICLE 4  
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning a Unit shall be entitled to the rights of membership and of use and enjoyment appurtenant to ownership of a Unit. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit.

Section 4.3 Membership. The Association shall have one category of membership consisting of all Owners, including the Declarant, so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of one vote for each Unit owned. The Association shall not have a vote with respect to any Unit which may be owned by it. Declarant shall be a member and shall be entitled to vote with respect to Units owned by Declarant.

Section 4.4 Declarant Control.

4.4.1 Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set forth in the Bylaws. Declarant may voluntarily relinquish such power when evidenced by a notice executed by Declarant and recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, but, in such event, Declarant may, at its option, require that specified actions of the Association or the Executive Board, as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove Directors and officers, be approved by Declarant before they become effective.

4.4.2 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than Declarant elect a majority of the members of the Board of Directors, the Declarant shall deliver to the Board of Directors, without charge, all property of the Owners and of the Association, including the following:

- (a) the original or a certified copy of the recorded Declaration, the Association's Articles of Incorporation, a Certificate of Good Standing, Bylaws, minutes books, any other books and records, and any rules and regulations or policies and procedures which may have been adopted;



(b) an accounting for Association funds and financial statements from the date the Association received any funds and ending on the date the period of Declarant control ends, in accordance with CRS 38-33.3-303(9);

(c) the Association's funds, or control thereof;

(d) all of the tangible personal property that has been represented by the Declarant to be the property of the Association which has been used exclusively in the operation and enjoyment of the Common Elements, a copy of any plans and specifications used in construction of the improvements, and inventories of the Association's property;

(e) all insurance policies then in force in which the Owners, the Association or its directors and officers are named insureds;

(f) any permits issued by governmental bodies applicable to the common interest community which are currently in force or which were issued within one year prior to the date on which the Owners other than the Declarant took control of the Association;

(g) any written warranties that are still effective;

(h) a roster of the names and addresses, and telephone numbers, if known, of the Owners and first lienors

(i) any employment contracts to which the Association is a party;

(j) any service contract to which the Association is a party or by virtue of which the Association has any obligation to pay a fee to the persons performing services;

Section 4.5 Owner's and Association's Address for Notices. Pursuant to CRS 38-33.3-205, all Owners of each Unit shall have one and the same mailing address to be registered with the Association and used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such address to the Secretary of the Association within five (5) days after transfer of title to the Unit to such Owner or Owners; such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners' of the Unit. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of the Unit less than all of the Owners of such Unit. If no address is registered or if all of the Owners cannot agree, then the address set forth in the deed to the Unit shall be deemed their registered address until another registered address is furnished as required under this Section. Any notice delivered to a First Mortgagee in accordance with the terms of this Declaration shall be sent to the address for such party specified in the First Mortgage unless the First Mortgagee notifies the Association in writing of a different address.

All notices and demands intended to be served upon the Executive Board shall be sent to the following address or such other address as the Executive Board may designate from time to time by notice to all of the Owners:

Red Draw Condominium Owners Association  
P. O. Box 146  
Wolcott, Colorado 81655.

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail.

## ARTICLE 5 MAINTENANCE, PARTY WALLS, LANDSCAPING, PETS, AND SPECIAL EASEMENT

**Section 5.1 Maintenance.** In order to maintain a uniform appearance and a high standard of maintenance within the Project, the Association shall maintain the Exterior Maintenance Area, as more fully set forth below.

**5.1.1 Condominium Unit Exteriors.** Subject to the insurance responsibilities set forth in Article 9 below, the Association shall maintain the exterior of all Condominium Units ("Condominium Unit Exteriors"), which shall include, but shall not be limited to, painting and/or staining of the exterior (including decks and porches), painting and/or staining any other exterior walls, fences and gates, if any, and all roof maintenance and repair (including snow and ice removal). The Association shall have the sole discretion to determine the time and manner in which its maintenance shall be performed, as well as the color or type of materials used to maintain the Condominium Unit Exteriors. The Owner shall be responsible for window washing and the repair or replacement of broken window panes. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

**5.1.2 Landscaping, Sidewalks and Driveway.** The Association shall maintain landscaping upon the Common Area. Maintenance of the landscaping shall include, but not be limited to, maintaining lawns, trees and shrubs and any irrigation system. The Association shall also maintain all sidewalks and driveways and the maintenance provided under this Section shall include snow removal services. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine.

**5.1.3 Association's Right to Grant Owner's Maintenance Responsibility.** The Association shall have the right to promulgate uniform reasonable rules and regulations regarding Condominium Unit maintenance by each individual Unit Owner.

**Section 5.2 Special Easement.** The Association and the Executive Board and their respective representatives are hereby granted a non-exclusive easement to enter upon and use the Common Areas as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 5.

**Section 5.3 Maintenance Contract.** The Association or Executive Board may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the Common Areas. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

**Section 5.4 Owner's Responsibility.** Except as set forth below, an Owner shall be responsible for maintaining all portions of the Owner's Unit. Notwithstanding the foregoing, the Owner shall not be responsible for maintaining the Exterior Maintenance Area, unless this obligation is modified pursuant to Section 5.1.3. The Association shall have the right and power to prohibit on a Unit any storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Area. No Owner shall make any addition or other alteration to any portion of the Exterior Maintenance Area without the express written consent of the Executive Board.

**Section 5.5 Owner's Failure to Maintain or Repair.** In the event that a Unit is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the improvements on the Unit that are insured by the Owner are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and the building in which it is located, to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

**Section 5.6 Pets.** No pets other than service animals may be maintained within any of the Condominium Units; in the event that a Unit Owner wishes to have a service animal upon the Premises, the Association may require a letter from the duly-licensed Colorado physician verifying the need for a service animal. In no event may pets remain unattended in the common areas of the Building.

## ARTICLE 6 ASSOCIATION DUTIES

**Section 6.1 Association Management Duties.** Subject to the rights and obligations of Declarant and the other Units Owners, as set forth in this Declaration, the Association shall be responsible for the administration and operation of the Project and for the exclusive management, control, maintenance, repair, replacement, and improvement of the Common Area and the Exterior Maintenance Area (including facilities, furnishings, and equipment related thereto), and shall keep the same in good, clean, attractive condition, order, and repair. The expenses, costs, and fees of such management, operation, maintenance, and repair by the Association shall be part of the Assessments, and, subject to the budget approval procedures of Section 10.3 below, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees.

**Section 6.2 Replacement Reserve.** The Association shall establish and maintain, as part of its budget and out of the installments of the annual Assessments, adequate reserve accounts for maintenance, repair, or replacement of any portion of the Common Area or the Exterior Maintenance Area that must be maintained, repaired and/or replaced on a periodic basis. If not already held by the Association, the reserve account(s) shall be transferred to the Association for deposit to a segregated fund upon the termination of the period of Declarant control.

**Section 6.3 Owner's Negligence.** In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Area or the Exterior Maintenance Area is caused through or by the negligent or willful act or omission of an Owner, or by any member of an Owner's family, or by an Owner's guests, invitees, or tenants, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner. If the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a Default Assessment determined and levied against such Unit, enforceable by the Association in accordance with Sections 10.9, 10.10, and 10.11 below.

**Section 6.4 Delegation of Management and Maintenance Duties.** The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration.

**Section 6.5 Acquiring and Disposing of Personal Property.** The Association may acquire, own, and hold, for the use and benefit of all Owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise. Each Owner may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful Rights of the other Owners.

**Section 6.6 Cooperation with Districts and Other Associations.** The Association may contract or cooperate with any metropolitan or special districts, or with other homeowners' associations or entities as may be convenient or necessary to provide services and privileges and to fairly

allocate costs among the parties. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

**Section 6.7 Use and Rental of Condominium Unit.**

6.7.1 No Owner, except for Declarant, may, except with prior written approval of the County, and subject to Eagle County's conditions of approval, rent any Condominium Unit for any period of time. Prior to occupancy, all tenants must be approved by the County. The County shall not approve any rental if such rental is being made by Owner to utilize the Condominium Unit as an income producing asset, except as provided below, and shall not approve a lease with a rental term of less than thirty (30) days and no more than six (6) months without clear and convincing evidence that a lease longer than six months (6) is necessary. A signed copy of the lease must be provided to the County prior to occupancy by any tenant. Any such lease approved by the County shall be at and for a rental substantially equal to the monthly expenses for the cost of principal and interest payments, taxes, property insurance, condominium or homeowners' assessments, utilities remaining in owner's name, plus an additional twenty dollars (\$20) and a reasonable (refundable) security deposit. The requirements of this paragraph shall not preclude the Owner from sharing occupancy of the Property or unit with non-owners on a rental basis provided Owner continues to meet the obligations contained in this Agreement and any Guidelines adopted by Eagle County.

**Section 6.8 Enforcement of Association Documents.** The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law.

**Section 6.9 Identity of Executive Board and Managing Agent.** From time to time, but no less frequently than annually, the Association shall deliver to each Owner a notice containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

**Section 6.10 Payments to Working Capital Account.** In order to provide the Association with adequate working capital funds, the Association shall collect and deposit into a segregated fund the sum of \$1200.00 at the time of the initial sale of each Condominium Unit by the Declaration. The Association shall maintain the working capital funds to meet unforeseen expenditures or to acquire additional equipment or services in connection with the Common Area and the Exterior Maintenance Area for the benefit of the members of the Association, subject to the budget approval procedures of Section 10.3 below. Declarant is prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits during the period of Declarant control. Such payments to this fund shall not be considered advance payments of Annual Assessments. The unused portion of the working capital contribution shall be returned to each Owner upon the sale of his Unit, provided that the purchaser of the Unit has contributed the required working capital to the Association.

**Section 6.11 Implied Rights.** The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be granted to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association or reasonably necessary to effectuate any such right or privilege.

**Section 6.12 Books and Records of the Association.** The Executive Board or the Managing Agent, as the case may be, shall keep, detailed, accurate records of the receipts and expenditures affecting the Common Area and the Exterior Maintenance Area and shall maintain such other books and records as may be required under the Act. Owners and Mortgagees, as well as insurers or guarantors of First Mortgages, may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board, including, but not limited to, the Association's audited or reviewed financial statements for the immediately preceding fiscal year, if an audit or review is performed, which must be made available within one hundred twenty (120) days of the Association's fiscal year end, during convenient weekday business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles and Bylaws, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner, prospective purchaser of a Unit, or Mortgagee and any insurer or guarantor of a First Mortgage at all times during convenient weekday business hours.

**Section 6.13. Limitation of Liability.** Notwithstanding the duty of the Association to maintain or repair the Common Area and the Exterior Maintenance Area, and except to the extent covered by Association insurance, as described in Article 9, the Association shall not be liable to owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Common Area or of the Exterior Maintenance Area.

## ARTICLE 7 MECHANIC'S LIENS

**Section 7.1 No Liability.** If an Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no other Owner shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, material men and other persons furnishing labor or materials to his Unit. Nothing herein contained shall authorize any Owner or any person dealing through, with or under any Owner to charge the Common Area or any Unit other than such Owner's Unit with any mechanic's lien or other lien or encumbrance whatever. On the contrary (and notice is hereby given), the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Unit for work done or materials furnished to any other Owner's Unit is hereby expressly denied.

**Section 7.2 Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or

order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

**Section 7.3 Association Action.** Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Unit or Units.

## ARTICLE 8 PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT

**Section 8.1 Owners' Easements.** Every Owner has a non-exclusive right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Unit subject to the provisions contained herein. Every Owner shall have a right of access to and from his Unit over and across those portions of the other Units or the Common Area on which driveways are located.

**Section 8.2 Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration, which easements and licenses of record are set forth on the attached Exhibit D. In addition, the Property is subject to those easements set forth in this Article 8.

**Section 8.3 Declarant's Rights Incident to Construction and Marketing.** Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Common Area and the right to store materials on the Common Elements, and to make such other use of the Common Elements as may be reasonable necessary or incident to the complete the construction and sale of the Project, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, or family members, guests, tenants, or invitees of any Owner. Declarant, for itself and its successors and specific assigns, hereby retains a right to maintain any Unit or Units as sales offices, management offices, or model residences so long as Declarant, or any Successor Declarant, continues to own, lease, or control a Unit. The use by Declarant of any Unit as a model residence, office, or other use shall not affect the Unit's designation on the Plat as a separate Unit.

**Section 8.4 Other Easements.**

8.4.1 Each Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration, including, without limitation, any patios and decks encroaching into the Common Area. A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and, does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

8.4.2 Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Units.

8.4.3 There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Units and the structures and improvements situated thereon, including the Party Walls, for ingress and egress, installation, replacing, repairing and maintaining a common landscape irrigation system, if any, and all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for Declarant or the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, Section 8.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration, which easements and licenses of record are set forth on the attached Exhibit D. In addition, the Property is subject to those easements set forth in this Article 8.

8.4.4 No Owner shall hinder nor permit his guest to hinder reasonable access by any other Owner and his guest to the Units and parking areas.

Section 8.5 Reservation for Expansion. Declarant hereby reserves to itself and the Association for Owners in all future phases of the Project an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, irrigation, and ingress to and egress from the Expansion Property, and other properties abutting and contiguous to the Property and the Expansion Property, and for such use of the Common Area as may be reasonably necessary or incident to the construction of the new units on the Expansion Property or for improvements on the Property or the Expansion Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Project by the Owners. The location of these easements and rights-of-way may be made certain by Declarant or by the Association by instruments recorded in the Office of the Clerk and Recorder of Eagle County, Colorado.



**Section 8.6 General Maintenance Easement.** An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 5 and Article 6 above, including the right to enter upon any Unit for the purpose of performing maintenance to the Exterior Maintenance Area, as more fully set forth in Article 5 and Article 6 above.

**Section 8.7 Association as Attorney-in-Fact.** Each Owner, by his acceptance of a deed or other conveyance vesting in him an ownership interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant, with full power of substitution, in the Owner's name, place and stead, to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner, and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

**Section 8.8 Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Area to the members of his family, his tenants, guests, licensees, and invitees, but only in accordance with and subject to the limitations of the Association Documents.

**Section 8.9 Reservation of Easements. Exceptions and Exclusions.** The Association is hereby granted the right to establish, from time to time, by declaration or otherwise, utility and other easements, permits, or licenses in and over the Common Area, for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, and utilities, to create other reservations, exceptions, and exclusions with respect to the Common Area in the best interests of all the Owners and the Association, and to assign its right to future income, including the right to receive Assessments.

**Section 8.10 Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or services to enter upon the Common Area in the performance of their duties.

**Section 8.11 Governmental Requirements.** Declarant hereby reserves the right to grant such easements, from time to time, as may be required by any governmental agency. Such easements shall specifically include, but not be limited to, any public rights-of-way and any environmental easements required by federal, state or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

**Section 8.12 Drainage Easement.** An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, and under any portion of the Common Area

for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Common Area so as to improve the drainage of water on the Property. Owners are prohibited from in any way modifying the grading and/or drainage pattern on any Common Area.

Section 8.13 Declarant Easements. Declarant reserves unto itself, its successors, assigns, lessees, guests, licensees and invitees, for so long as it holds any interest in any Unit, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Property as it may deem necessary for its use from time to time.

## ARTICLE 9 INSURANCE AND FIDELITY BONDS

Section 9.1 General Insurance Provisions. The Association shall maintain, to the extent reasonably available, and in compliance with requirements of any insurer of a First Mortgage:

9.1.1 Property insurance on the Common Area for special form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, paving areas, landscaping and other items normally excluded from property insurance policies. Such insurance shall cover all other insurable improvements located on or constituting part of the Common Area, if any.

9.1.2 Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area, the Exterior Maintenance Area, and the Association, in an amount deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be considered as additional insureds to the extent required by the Common Interest Ownership Act, but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and the Exterior Maintenance Area. The insurance shall cover claims of one or more insured parties against other insured parties.

9.1.3 Physical Damage Insurance for all Units, except that each Owner may be required to obtain and maintain such insurance pursuant to Section 9.12 below. Such insurance shall cover the full replacement value of each of the Units, less any reasonable deductibles, at the time the insurance is purchased, and at each renewal date, exclusive of those items normally excluded from property casualty policies. The insurance coverage shall include, unless the Executive Board directs otherwise, fixtures and carpet initially installed in the Units and replacements thereof up to the value of those initially installed by Declarant, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by an Owner, all such insurance covering the interests of the Owners and their Mortgagees as their respective interests may appear. The Executive Board may obtain this insurance upon such terms and conditions as it deems advisable. Prior to obtaining any policy of property damage insurance or any renewal thereof, and at such other intervals as the Executive Board may deem advisable, the

Executive Board may, but shall not be obligated to, obtain an appraisal from an insurance company, or such other source as the Executive Board may determine, of the then-current replacement cost of the Units (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured.

9.1.4 The Association may carry such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 9.2 Cancellation. If the insurance described in Section 9.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners.

Section 9.3 Policy Provisions. Insurance policies carried pursuant to Section 9.1 must provide that:

9.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

9.3.2 The insurer waives its right to subrogation under the policy against any Owner or member of his household;

9.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

9.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 9.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 9.5 Association Policies. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for

deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

**Section 9.6 Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Section 9.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

**Section 9.7 Repair and Replacement.**

9.7.1 Any portion of the Property for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.7.1.1 The regime created by this Declaration is terminated;

9.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.7.1.3 Eighty percent (80%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild and such decision is approved in writing by the Executive Board.

9.7.1.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

9.7.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Project and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to the Sharing Ratios of all the Units.

**Section 9.8 Common Expenses.** Premiums for insurance that the Association acquires and other expenses incurred in obtaining and maintaining such insurance are Common Expenses.

**Section 9.9 Fidelity Insurance.** Blanket fidelity bonds shall be maintained by the Association to protect against dishonest acts on the part of its officers, directors, and employees, and on the part of all others who handle or are responsible for handling the funds belonging to, or administered by, the Association. The Association shall also secure and maintain at all times, or require to be secured or maintained at all times by any parties handling the collection, deposit,

transfer, or disbursement of Association funds, fidelity insurance. Such bonds shall be in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Managing Agent, as the case may be, at any given time during the term of each bond, provided, however, that in no event shall the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer, or disbursement of Association funds be less than \$50,000.00. Additionally, all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the Association's operating account. Such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of the premium) without at least ten (10) days prior written notice to the Association.

**Section 9.10 Worker's Compensation Insurance.** The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

**Section 9.11 Other Insurance.** The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties.

**Section 9.12 Insurance Obtained by Owners.** In the event that the Association is unable to obtain or maintain physical damage insurance for the Units as set out in Section 9.1.3 upon terms reasonably deemed acceptable to the Executive Board, each Owner shall obtain and at all times maintain property damage insurance as described in Section 9.1.3 at such Owner's expense, covering the full replacement value of such Owner's Condominium Unit. The beneficiaries under such policy shall be that Owner, the Association and any and all other Owners within the same residential structure as the Owner obtaining such property damage insurance. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. Additionally, each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at each Owner's expense, covering the full replacement value of the Owner's personal property not required to be insured by the Association, and personal liability insurance in a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to personal property, and if higher limits shall at any time be customary to protect against tort liability, such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Unit as

such Owner, in the Owner's sole discretion, shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, off behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should Declarant be the Owner of any Unit. No Owner shall obtain separate insurance policies on the Common Area.

**Section 9.8 Unit Owners Insurance.** The minimum insurance coverage which must be obtained and kept in force by each Unit Owner shall be as follows:

- 9.8.1 \$25,000.00 real property casualty loss coverage
- 9.8.2 \$500,000.00 liability insurance covering personal injury or death
- 9.8.3 \$\$5,000.00 water and sewer backup insurance
- 9.8.4 \$10,000.00 assessment coverage.

The maximum deductible amount of each policy shall be \$1,000.00, which amount may be increased by up to 5% per annum by the insured. The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any master policy carried by the Association.

To the maximum extent allowed by law, such insurance shall contain waivers of subrogation and shall be written so that the insurance obtained by the Association shall not be affected or diminished thereby.

Each Unit Owner may be required, upon purchasing a Condominium Unit, and once per calendar year thereafter, to provide proof that such insurance is in full force and effect. And may be required to file a copy of the Unit Owner's insurance policy with the Executive Board. In the event that such proof is not furnished in form reasonably satisfactory to the Executive Board, the Association may, but shall have no obligation to, obtain such insurance coverage on behalf of the defaulting owner, in which case the amounts paid or incurred for such insurance, shall be collectible as additional dues.

## ARTICLE 10 ASSESSMENTS

**Section 10.1 Obligation.** Each Owner, including Declarant, by accepting a deed for a Unit, is deemed to covenant to pay to the Association:

- 10.1.1 Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and the Exterior Maintenance Area and to perform the functions of the Association;

10.1.2 Special Assessments for capital improvements and other purposes as stated in this Declaration; and

10.1.3 Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or by abandoning or leasing his Unit.

Section 10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Project, and for the improvement and maintenance of the Common Area and the Exterior Maintenance Area, and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 10.3 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting sixty percent (60%) or more of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Area and Exterior Maintenance Area; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Common Area and the Exterior Maintenance Area; care of grounds within the Common Area and Exterior Maintenance Area; routine repairs and renovations within the Common Area and Exterior Maintenance Area; wages; common water and utility charges for the Common Area and Exterior Maintenance Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements within the Common Area and Exterior Maintenance Area on a periodic basis, as needed. The Association is empowered to pledge its Annual Assessments or any other of its receivables as collateral securing any loan(s) or other obligations of the Association.

**Section 10.5 Due Dates for Assessment Payments.** Unless otherwise determined by the Executive Board, the Annual Assessments and any Special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article 10), on the first day of each month. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount of fifteen percent (15%) of the amount outstanding or such other charge as the Executive Board may fix by rule from time to time as provided in the Bylaws to cover the extra expenses involved in handling such delinquent Assessment installment. An Owner's Assessment shall be prorated if the ownership of a Unit commences or terminates on a day other than the first day or last day, respectively, of a month or other applicable payment period.

**Section 10.6 Apportionment of Annual Assessments.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Units on the basis of the Sharing Ratios in effect on the date of assessment, as set forth on Exhibit C to this Declaration. The formula for the Sharing Ratio is an allocation among all Units based on their relative square footage.

**Section 10.7 Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Area or Exterior Maintenance Area or for any other expense incurred or to be incurred as provided in this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.7, subject to the requirements that any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. Special Assessments shall be based on a budget adopted in accordance with Section 10.3 above provided that, if necessary, the Association may adopt a new budget pursuant to Section 10.3 prior to levying a Special Assessment. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

**Section 10.8 Default Assessments.** All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.



**Section 10.09 Lien for Assessments.** The Annual, Special, and Default Assessments (including installments of the Assessments) arising under the provisions of this Declaration (together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, including legal assistants' fees, which may arise under the provisions of Section 10.10 below) shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply in accordance with Section 38-33.3-316 of the Act. To further evidence the lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws and Section 10.10 below, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, a Managing Agent, or the Association's attorneys, and may be recorded in the Office of the Clerk and Recorder of Eagle County, Colorado.

**Section 10.10 Effect of Nonpayment of Assessments.**

10.10.1 If any Annual, Special, or Default Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the rate of eighteen percent (18%) per annum, compounded annually, on any amount of the Assessment which was not paid within such thirty (30) day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment; (ii) the Association may declare due and payable all unpaid monthly or other installments of the Annual Assessment or any Special Assessment otherwise due during the fiscal year during which such default occurred, (iii) the Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same; and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for the foreclosure of real estate mortgages and in accordance with the Master Deed Restriction Agreement. Upon foreclosure, if title to a Unit should vest in a Non-Qualified Buyer (as defined in the Master Deed Restriction Agreement for the Occupancy and Resale of the Red Draw Deed Restricted Condominium Units), an immediate sale to a Qualified Buyer in accordance with the Agreement shall be required.

10.10.2 An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments (or any installment thereof) may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien for the Assessments. If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or cross-claims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of Annual and Special Assessments and all Default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges under Section 10.5 above, any accrued interest under this Section 10.10, and the Association's costs, expenses, and reasonable attorneys' fees (including legal assistants' fees) incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or

foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

10.10.3 Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to stop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent Default Assessments. The Association shall have the power and right to bid in, or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, and to convey or otherwise deal with the Unit acquired in such proceedings, consistent with the terms of the Master Deed Restriction.

10.10.4 First Mortgagees shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the First Mortgage in the payment of Assessments. In that event, the First Mortgagee shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

Section 10.11 Successor's Liability for Assessments. Notwithstanding the Association's perpetual lien upon a Unit for such Assessments (which shall continue subject to the provisions of Section 10.14 below), successors in interest to the fee simple title of a Unit, shall not be personally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such unit, arising prior to the date that a successor owner takes title to a Unit, unless assumed by such successor in interest or otherwise required by applicable law.

Section 10.12 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of the deed or other instrument of transfer of a Unit, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances, except the following:

10.12.1 Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;

10.12.2 To the extent permitted under the Act, after taking into account the superiority of a certain amount of assessment liens permitted by Section 38-33.3-316(2) of the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens. With respect to the foregoing subpart 10.13.2, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to

the Unit, and the amount of the extinguished lien may be re-allocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described in Section 10.13 above who obtain a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorneys' fees as provided in this Article 10, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided in Section 10.12 above and except as provided in Section 10.14 below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

**Section 10.13 Statement of Status of Assessments.** Upon ten (10) calendar days written request (furnished in the manner described below for the response to such request) to a Managing Agent, the Executive Board, or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

10.13.1 The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

10.13.2 The amount of the current installments of the Annual Assessment and the date that the next installment is due and payable;

10.13.3 The date of the payment of any installments of any Special Assessments then existing against the Unit; and

10.14.4 Any other information deemed proper by the Association. Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such a certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

ARTICLE 11  
ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12, or a complete or partial taking as provided in Article 13 below. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12  
DAMAGE OR DESTRUCTION

Section 12.1 The Role of the Executive Board. Except as provided in Section 12.6, in the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association pursuant to Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete, of the costs of repair and reconstruction. "Repair and reconstruction", as used in this Article, shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or, if upon completion of such work, the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.8, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

**Section 12.5 Disbursement of Funds for Repair and Reconstruction.** The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Unit, first to the Mortgagees and then to the Owners, as their interests appear.

**Section 12.6 Decision Not to Rebuild Common Area.** If the Association obtains the approval of Owners representing at least eighty percent (80%) of the total allocated votes in the Association and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, and all directly adversely affected Owners agree in writing, not to repair and reconstruct improvements within the Common Area and if no alternative improvements are authorized, and if such decision is approved in writing by the Executive Board, then and in that event the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds shall be distributed in accordance with the Act.

**Section 12.7 All repairs and reconstruction contemplated by this Article shall be performed** substantially in accordance with this Declaration, the Plat of the Red Draw Deed Restricted Condominium Units, and the original plans and specifications for the Condominium Units, unless other action is approved by the Association in accordance with the requirements of this Declaration and the other Association Documents.

**Section 12.8 Notice of Damage or Destruction.** In the event that any portion of the Project is substantially damaged or destroyed by fire or other casualty, then written notice of the damage or destruction shall be given by the Association to each Owner and First Mortgagee of the affected Units and the Eagle County Attorney's Office within a reasonable time following the event of casualty damage.

## ARTICLE 13 CONDEMNATION

**Section 13.1 Rights of Owners.** Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

**Section 13.2 Partial Condemnation; Distribution of Award; Reconstruction.** The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least eighty percent (80%) of the votes of all of the Owners and Eligible Mortgage Holders representing at least 51% of the votes of the Units that are subject to Mortgages by Eligible Mortgage Holders, shall otherwise agree and such decision shall be approved in writing by the Executive Board, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 12 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Unit among the Owners, first to the Mortgagees and then to the Owners, as their interests appear.

**Section 13.3 Complete Condemnation.** When all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of, or in avoidance of, condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Section 12.5 above.

**Section 13.4 Notice of Condemnation.** In the event that any portion of the Project shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE 14  
EXPANSION AND WITHDRAWAL

Section 14.1 Reservation of Expansion and Withdrawal Rights.

14.1.1 Declarant reserves the right for itself and any Successor Declarant to subject all or any part of the Expansion Property to the provisions of this Declaration and thereby expand the Property to include up to a maximum of sixty (60) Units, and to expand the Common Area.

14.1.2 Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the Project and the provisions of this Declaration.

14.1.3 Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the Project and from the provisions of this Declaration any real property subjected to this Declaration by a duly recorded Supplemental Declaration and, if necessary, Supplemental Plat prior to the time of a sale of a Unit comprising a portion of the real property described in said Supplemental Declaration and, if necessary, Supplemental Plat.

14.1.4 Supplemental Declarations and Supplemental Plats. Such expansion may be accomplished by the filing for record by Declarant in the Office of the Clerk and Recorder for Eagle County, Colorado, of one or more Supplemental Declarations and, if the real property being subject to this Declaration by such Supplemental Declaration has not been previously platted in a plat recorded in the Office of the Clerk and Recorder for Eagle County, Colorado, of a Supplemental Plat depicting such Expansion Property recorded concurrently with the applicable Supplemental Declaration. The Supplemental Declaration shall set forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion determines. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

Section 14.2 Expansion of Definitions. In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units comprising part of the Property plus any additional Units added by a Supplemental Declaration or Declarations and, if necessary, Supplemental Plat or Plats, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Units shall be effective to transfer rights in the Property, as expanded.

Section 14.3 Declaration Operative on New Units.

14.3.1 The new Units shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declaration, upon placing the Supplemental Declaration(s) describing the Expansion Property and, if necessary, Supplemental Plat(s) of public record in the Office of the Clerk and Recorder of Eagle County, Colorado.

14.3.2 It is contemplated that additional Units on the Property will be committed to this Declaration, but Declarant and any Successor Declarant shall have no affirmative obligation to construct any additional Units. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit any additional portion of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all Units which are added to this Declaration in accordance with these provisions relating to enlargement thereof.

14.3.3 No rights of any character of any owner of condominium units in the Expansion Property shall attach until a Supplemental Declaration and, if necessary, Supplemental Plat, is filed of record annexing the units constructed in such area to the Project. Upon the recording of such Supplemental Declaration and, if necessary, Supplemental Plat, the Units located in the area shall be deemed to be governed in all respects by the provisions of this Declaration.

#### Section 14.4 Effect of Expansion.

14.4.1 Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and, if necessary, Supplemental Plat(s) thereof, the Sharing Ratio applicable to a Unit shall automatically be reduced to a fraction, the numerator of which shall be the square footage of the applicable Unit and the denominator of which shall be equal to square footage of all Units then subject to this Declaration. Such reduction in the Sharing Ratio appurtenant to a Unit shall be reflected and set forth in the Supplemental Declaration.

14.4.2 Notwithstanding any inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original plat or is the owner of a Unit constructed in the Expansion Property) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for such new Common Area, costs and fees, if any. The recording of a Supplemental Declaration or Supplemental Plat shall not alter the amount of the Common Expenses assessed to a Unit prior to such recording.

Section 14.5 Termination of Expansion and Development Rights. The rights reserved to the Declarant, for itself, its successors and assigns for the expansion and development of the Expansion Property ("Expansion and Development Rights") shall expire seven (7) years from the date of recording this Declaration, unless terminated earlier pursuant to the terms and provisions of the Act or Eagle County Land Use Regulations, or unless the Expansion and Development Rights are (i) extended as allowed by law or (ii) reinstated or extended by the Association,



subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the Expansion and Development Rights by Declarant.

## ARTICLE 15 USE RESTRICTIONS

**Section 15.1 Use of Units.** All Units, except those Units owned by Declarant, shall be used for dwelling and lodging purposes only in conformity with the Master Deed Restriction Agreement and all zoning laws, ordinances, and regulations.

**Section 15.2 Conveyance of Units.** All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

**Section 15.3 Use of Common Area and Exterior Maintenance Area.** There shall be no obstruction of the Common Area or the Exterior Maintenance Area, nor shall anything be kept or stored on any part of the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Area or the Exterior Maintenance Area by any Owner without the prior written approval of the Association.

**Section 15.4 Prohibition of Increases in Insurable Risks and Certain Activities.** Nothing shall be done or kept in any Unit or in or on the Common Area, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Project or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Area which would be in violation of any statute, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body having jurisdiction over the Property. No damage to or waste of the Common Area shall be committed by any Owner, or by any member of the Owner's family, or by any guest, lessee, invitee, or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, the members of his family, or his guests, lessees, invitees, or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a Default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a Default Assessment as provided in Sections 10.9, 10.10, and 10.11 above.

**Section 15.5 Restriction on Signs.** Except as otherwise provided in Section 15.6, no signs or advertising devices of any nature shall be erected or maintained on any Unit or the Common Area, in such a manner as to be visible from any other Unit or the Common Area except signs approved by the Executive Board, political signs, signs required by applicable law or legal proceedings, signs which are required by law to be allowed, identification signs for work under

construction (as approved by the Executive Board), temporary signs to caution or warn of danger or the Association signs necessary or desirable to give directions or advise of rules or regulations. Permitted signs shall be subject to reasonable regulation by the Executive Board.

Section 15.6 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent (i) the exercise by Declarant of any special declarant rights (as that term is defined in the Act); or (ii) the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements, or signs, necessary or convenient to the development, marketing or sale of property within the general common elements; provided, however, that Declarant shall comply with all applicable laws in the exercise of the rights granted by virtue of the provisions of this Section.

## ARTICLE 16 OTHER ASSOCIATION MATTERS

Section 16.1 Association Matters. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Project is subject to the Association Documents, (b) by virtue of his ownership of a Unit, he has become a member of the Association, (c) such Owner is subject to any rules and regulations of the Association, and (d) pursuant to the Association Documents, an Owner is a member of a specified category of the Association and is entitled to all of the benefits and subject to all of the burdens of such membership. Each Owner, by accepting a deed to a Unit, acknowledges that he has received a copy of the Declaration and the Articles of Incorporation and Bylaws of the Association. Each Owner agrees to perform all of his obligations as a member of the Association as they may from time to time exist, including, but not limited to, the obligation to pay annual, special, and default assessments as required under the Association Documents.

Section 16.2 Enforcement of Association Documents.

16.2.1 The Association shall have the power to enforce the covenants and restrictions contained in the Association Documents, and to collect regular, special and default assessments on behalf of the Association.

Section 16.3 Architectural Control.

16.3.1 In addition to all other approvals which may be required, including, without limitation, the approval of the Design Review Board of the Association, no exterior or interior structural addition to or change or alteration to any Unit, the Common Area, the Exterior Maintenance Area (including the construction of any skylight, window, awning, or door) shall be made until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Executive Board.

16.3.2 After receiving the approval of the Executive Board, the Owner required to obtain such approval shall thereafter obtain all other approvals as may be required by any governmental or quasi-governmental body having jurisdiction over the Property.

Section 16.4 General Reservation. Subject to any applicable restrictions under the Act, Declarant reserves the right to dedicate any access roads and streets serving the Property for and to public use and to allow such street or road to be used by owners of adjacent land.

Section 16.5 Limit on Timesharing. No Unit shall be used for the operation of a timesharing, fraction-sharing, or similar program regardless of whether the reservation or time-use system is written or oral, recorded or unrecorded, fixed or floating.

Section 16.6 Acknowledgments. Each Owner is hereby advised of the following matters effecting the Project and the Owners' use and enjoyment thereof:

16.6.1 The Units are subject to the Master Deed Restriction Agreement of the Red Draw Deed Restricted Condominium Units. The Master Deed Restriction Agreement contains certain provisions that impair a Mortgagee's legal rights to remedy a default under the mortgage and that require the Owner to send a notice of past due payments or default under the note secured by the Mortgage to Eagle County, Colorado. In addition, the Master Deed Restriction Agreement imposes resale restrictions on the Units.

16.6.2 All Unit Owners acknowledge that the Red Draw Deed Restricted Condominium Units are located adjacent to various public and private facilities constructed or planned for construction on Declarant's land, including, without limitation, recreational fields and amenities, day care facilities, bike paths, and other educational and religious facilities and uses (the "Adjacent Facilities"). Any Owner acknowledges and agrees that such areas may generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof, including, without limitation: (i) associated vehicular, pedestrian and bicycle traffic, (ii) construction vehicles and equipment; (iii) events organization and (iv) outdoor lighting. No interest in or right to use any amenity, (other than amenities included within the common elements of the Project, if any, shall be deemed conveyed to an Owner as a Unit Owner.

## ARTICLE 17 DECLARANT'S RIGHTS REGARDING TRANSFER

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

## ARTICLE 18 MORTGAGEE'S RIGHTS

Section 18.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Mortgages. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the articles of incorporation, bylaws and rules and regulations of the Association. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but, in the case of any conflict, the provisions of this Article shall control.

Section 18.2 Percentage of Eligible Mortgage Holders. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it shall mean the approval or consent of Eligible Mortgage Holders under Mortgages encumbering Units which in the aggregate have, allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to Mortgages held by Eligible Mortgage Holders.

Section 18.3 Title Taken by Mortgagee. Any Mortgagee holding a First Mortgage of record encumbering any Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired, or (ii) could have been acquired under the laws of the State of Colorado governing foreclosures, whichever is earlier, provided, however, that the lien of the Association for unpaid assessments shall not have priority over a First Mortgage in the amount of more than six (6) months of annual Assessments.

Section 18.4 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for damages or taking of all, or part, of the a Unit or the Common Area, neither the Owner, nor any other person, shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 18.5 Audited Financial Statement. Upon the written request from any Mortgagee which has an interest or prospective interest in any Unit, the Association shall prepare and furnish an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee, if such mortgagee advances the estimated costs thereof.

Section 18.6 Notice of Actions. The Association shall give prompt written notice of the following events to each Eligible Mortgage Holder that sends the Association a written request for such information, which request states the name and address of the Eligible Mortgage Holder and the Unit on which it holds the mortgage:

18.6.1 Any condemnation or any casualty loss which affects a material portion of the Common Area or any Unit in which an interest is held by the Eligible Mortgage Holder.

18.6.2 Any delinquency which remains uncured for sixty (60) days in the payment of Assessments by an Owner whose Unit is encumbered by a Mortgage held by such Eligible Mortgage Holder.

18.6.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

18.6.4 Any proposed action which would require the consent of Eligible Mortgage Holders.

18.6.5 Consent Required. No amendment of any provision which is of a material nature may be effective without the vote of Owners representing at least sixty-seven percent (67%) or more of the total voting interest in the Association and until approved in writing by Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. A change to any of the provisions governing the following would be considered as material:

18.6.5.1 voting rights;

18.6.5.2 increases in assessments that raise the previously assessed amount by more than 25% in one year, assessment liens, or the priority of assessment liens;

18.6.5.3 reductions in reserves for maintenance, repair, and replacement of common elements;

18.6.5.4 responsibility for maintenance and repairs;

18.6.5.5 re-allocation of interests in the general or limited common elements, or rights to their use;

18.6.5.6 re-definition of any unit boundaries;

18.6.5.7 convertibility of units into common elements or vice versa;

18.6.5.8 expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;

18.6.5.9 hazard or fidelity insurance requirements;

18.6.5.10 imposition of any restrictions on the leasing of units;

18.6.5.11 imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;

18.6.5.12 restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or

18.6.5.13 any provisions that expressly benefit mortgage holders, insurers, or mortgage guarantors.

Section 18.7 Notice of Objection. If any other change in this Declaration or any Association Documents requires the approval of any Mortgagees, then unless such Mortgagee, provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action, within thirty (30) days following the receipt of notice of such proposed amendment or action by certified or registered mail with return receipt requested, the Eligible Mortgage Holder will be deemed conclusively to have approved the proposed amendment or action.

#### Section 18.8 First Mortgagee Rights.

18.8.1 First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

18.8.2 Eligible Mortgage Holders shall be entitled to cure any delinquency of the Owner of a Unit encumbered by the eligible Mortgage Holder in the payment of Assessments of which the Eligible Mortgage Holder has received notice under Section 18.6.2 above. In that event, the Eligible Mortgage Holder shall be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.

### ARTICLE 19 MISCELLANEOUS

Section 19.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be amended as is necessary to comply with the Act.

Section 19.2 No Right of First Refusal. This Declaration does not create any right of first refusal with respect to a Unit.

Section 19.3 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the provisions of this Declaration and the termination provisions of the Act.

Section 19.4 Amendment. The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon approval of Owners representing sixty-seven percent (67%) or more of the total voting interest in the Association at a meeting of the Owners called for that purpose or by written consent; provided, however, that any provision of this Declaration requiring a vote of more than sixty-seven percent (67%) of the total voting interest in the Association to be effective may only be amended by a vote of the applicable aggregate voting interest stated in such provision. In addition, (a) a majority of the voting Directors of the Executive Board may make, without the approval of the Owners, changes to any Association Documents to the extent necessary to correct a factual error, and (b) any proposed amendment to this Declaration which affects any right of Declarant shall require the prior written approval of Declarant, in addition to the approval requirements otherwise set forth herein.

Section 19.5 Unilateral Amendment Rights Reserved by Declarant. Notwithstanding any provision in this Declaration to the contrary, Declarant, acting alone, pursuant to the provisions of CRS 38-33.3-205(5), reserves to itself the right and power to modify and amend this Declaration to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 19.6 Recording of Amendments. Any amendment to this Declaration must be executed by the President of the Association and recorded in the Office of the Clerk and Recorder of Eagle County, Colorado, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment or that no approval of the Owners was necessary.

Section 19.7 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges, and other provisions contained in this Declaration, the Articles, the Bylaws, and the rules and regulations of the Association, all as amended, shall be by any proceeding pursuant to Article 18 of this Declaration to the extent required by the terms of this Declaration, or otherwise at law or in equity, against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain, and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded under Article 18 or by the Court, as applicable.

Section 19.8 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 19.9 Conflict of Provisions. In case of any conflict between this Declaration and the Articles or the Bylaws, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control. In case of any conflict between the Association's rules and regulations or policies and procedures, the provisions of the Declaration, Articles and Bylaws shall control.

Section 19.10 Non-waiver. Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 19.11 Number and Gender. Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular and the use of any gender shall include all genders.

Section 19.12 Captions. The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 19.13 Exhibits. All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Executed as of the 31<sup>st</sup> day of March, 2008

The Archdiocese of Denver, a Colorado corporation sole,  
as trustee and for the benefit of St. Clare of Assisi Catholic Parish,  
a separate public juridic person under 1983 Code of Canon Law  
of the Roman Catholic Church

By: 

Rev. Msgr. Thomas S. Fryar, *V. G.*  
attorney in fact for Charles J.  
Chaput, O. F. M. Cap.,  
Archbishop of Denver

Acknowledged and Agreed to by:  
St. Clare of Assisi Catholic Parish

By: 

Very Rev. Robert J. Kinkel, V. F.  
Pastor, St. Clare of Assisi Catholic Parish  
Edwards, Colorado



STATE OF COLORADO )  
 )  
CITY AND COUNTY OF DENVER )

The foregoing Declaration of Covenants for Red Draw Deed Restricted Condominium Units was acknowledged before me this 31<sup>st</sup> day of March, 2008, by Thomas S. Fryar, as Attorney-in-Fact for Charles J. Chaput, O.F.M. Cat., Archbishop of Denver, for the Archdiocese of Denver, a Colorado corporation sole, and by Robert J. Kinkel, as Pastor of St. Clare of Assisi Catholic Parish, Edwards, Colorado.

Witness my hand and official seal.

My commission expires: August 2, 2010



Linda A. Sarmio  
Notary Public

2334 S. Madison, Denver, CO  
Address

9/13/07