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REC: \$166.00  
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**AMENDED AND RESTATED  
DECLARATION  
  
FOR  
  
TYROLEAN CONDOMINIUMS**

***ADDRESS OF THE ASSOCIATION: c/o:***

***Ptarmigan Management  
62 East Meadow Drive  
Vail, Colorado 81657  
Attn: Tom Saalfeld***

***Note that this address may be changed from time to time pursuant to Section 6.2 and Section 15.3 below.***

AMENDED AND RESTATED

DECLARATION

FOR

TYROLEAN CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION is dated April 2, 2013 and shall be effective the date this instrument is recorded.

RECITALS:

A. That certain, "Condominium Declaration for Tyrolean Condominiums," was recorded on February 27, 1981 at Reception No. 215509 in the office of the Eagle County Clerk and Recorder, State of Colorado. This instrument was thereafter amended by: (i) the "First Amendment to Condominium Declaration for Tyrolean Condominiums" recorded on May 23, 2005 at Reception No. 916607; and (ii) the "Second Amendment to Condominium Declaration for Tyrolean Condominiums," recorded on December 31, 2009 at Reception No. 200927947. As so amended, this instrument is referred to as the "Original Declaration."

B. The Original Declaration imposed upon the real property described in the Original Declaration, certain terms, provisions, covenants, conditions, restrictions, easements, reservations, uses, limitations and obligations, which run with and are binding upon said real property. Said property is more particularly described on Exhibit A, attached hereto and incorporated herein by this reference (the "Real Estate").

C. As the condominium community (the "Community") was created prior to July 1, 1992, it is subject to some, but not all, of the provisions of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq. (the "Act"). The Community expressly elects to not subject the Community to all of the provisions contained in the Act.

D. Tyrolean Condominium Association (the "Association") has been incorporated under the laws of the State of Colorado, as an owners association.

E. The Owners desire to amend and restate all provisions of the Original Declaration by virtue of this Amended and Restated Declaration (the "Declaration"), and intend upon the recording of this Declaration, that the Original Declaration shall be superseded entirely by this Declaration, subject only to those easements of record as of April 2, 1997 and the lien for real property taxes.

F. Written approval of this Amended and Restated Declaration from 100% of the owners and all holders of first mortgages has been obtained in accordance with the Original Declaration and C.R.S. § 38-33.3-217, as is evidenced by the acknowledgment attached to this Amended and Restated Declaration.

NOW THEREFORE, the Original Declaration is amended and restated as follows:

## ARTICLE 1 DEFINED TERMS

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration. In case of a conflict between a definition in this Declaration and the Act, the definition in this Declaration shall control.

Section 1.1 Allocated Interest. Collective reference to the undivided interest in the Common Elements, the Common Expense Liability, and the voting interest appurtenant to a Residential Unit as set forth on Exhibit B, subject to reallocation pursuant to Section 12.12.8 below. The total voting interests within the Community are also shown on Exhibit B.

Section 1.2 Articles. The Amended and Restated Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 1.3 Association. Tyrolean Condominium Association, a Colorado non-profit corporation, its successors and assigns.

Section 1.4 Board of Directors; Board. The governing body of the Association, referred to in the Act as the "Executive Board."

Section 1.5 Buildings. The two structures within which Residential Units and Common Elements are located (singularly, a "Building"). The structure containing Residential Units No. 1 through 8, inclusive, is hereby identified as "Building A", and the structure containing Residential Unit 9 is hereby identified as "Building B".

Section 1.6 Bylaws. The Amended and Restated Bylaws of the Association, as the same may be amended and restated from time to time.

Section 1.7 Common Elements. All portions of this Community excluding Residential Units and Parking Space Units. The term "Common Elements" includes Building A Common Elements, Building B Common Elements, Shared Common Elements and Limited Common Elements, unless the context requires otherwise.

1.7.1 Building A Common Elements. The Common Elements that are for the exclusive use and benefit of Building A and more particularly described in Subsection 3.5.1 below.

1.7.2 Building B Common Elements. The Common Elements that are for the exclusive use and benefit of Building B and are more particularly described in Subsection 3.5.2 below.

1.7.3 Shared Common Elements. Common Elements which all Owners have an undivided interest in, as more particularly described in Subsection 3.5.3 below. Shared Common Elements are referred to as "G.C.E." on the Map.

Section 1.8 Common Expense Assessment; Assessment. In addition to the definition included in the Act, these terms shall include the following items levied against a particular Owner and/or the Residential Unit and/or the Parking Space Unit: (i) the Owner's Allocated Interest in the Common Expenses (i.e., the "Common Expense Liability") subject to reapportionment pursuant to Section 7.3; (ii) late charges, attorneys' fees, fines, and interest charged by the Association at the rate as determined by the Board; (iii) Special Assessments levied pursuant to Section 7.5; (iv) Special Unit Assessments levied

pursuant to Section 7.6; (v) Parking Fees; and (vi) any sums permitted by the Governing Documents or the Act to be assessed against a particular Owner or Unit.

Section 1.9 Common Expenses. As used in this Declaration, this term includes all charges levied by and for the benefit of the Association or individual Owners pursuant to the Governing Documents, including, but not limited to: (i) annual costs and expenses of the Association; (ii) expenses in the maintenance of Shared Common Elements, Building A Common Elements and Building B Common Elements allocated as provided on Exhibit B; (iii) expenses for which a Special Assessment is levied as provided in Section 7.5 below; (iv) amounts necessary to fund reserves; (v) expenses for which a Parking Area Assessment is levied as provided in Sections 7.1 and 7.5 below; and (vi) amounts levied for expenditures incurred pursuant to the Governing Documents.

Section 1.10 Community. The Real Estate shown on Exhibit A, including all structures and improvements erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association. The name of the Community is "Tyrolean Condominiums."

Section 1.11 Covenants. Collective term for all promises, restrictions, reservations, conditions, terms, easements, and rights-of-way specifically set forth in this Declaration or in any one of the Governing Documents as the same may be adopted or amended from time to time.

Section 1.12 Declaration. This instrument together with the Map, as each may be amended from time to time.

Section 1.13 First Mortgage. A mortgage, deed of trust, deed to secure a debt, or any other form of security instrument affecting title to a Residential Unit (collectively, "Mortgage") which is subject only to governmental liens, the lien for real property taxes, a portion of the Common Expense Assessment, and other liens made superior by Colorado law. The holders, insurers, and guarantors of a First Mortgage are collectively referred to as "First Mortgagees."

Section 1.14 Governing Documents. Collective reference to those documents that govern the operation of the Association, including: (i) the Articles; (ii) the Bylaws; (iii) the Rules; (iv) the Map; (v) all policies and procedures adopted by the Board; and (vi) this Declaration, as one or more of the same may be amended from time to time.

Section 1.15 Limited Common Elements. Those Common Elements designed or designated for exclusive use by the Owner of a particular Residential Unit or which are limited to and reserved for the common use of one or more but fewer than all the Owners within a Building, all as more particularly described in Section 3.6 below. Limited Common Elements are referred to as "L.C.E." on the Map.

Section 1.16 Maintain; Maintenance (and all forms of this word). Collective reference to any and all of the following: construction, maintenance, repair, painting, repainting, refurbishment, replacement, reconstruction, demolition, removal, enhancement and improvement, unless the context requires otherwise.

Section 1.17 Map. The Condominium Map for Tyrolean Condominiums recorded in the real property records of Eagle County on February 27, 1981 in Book 319 at Page 138, as amended by the Amended Condominium Map Tyrolean Condominiums recorded June 19, 2006 at Reception No. 200616161 and the second Amended Condominium Map Tyrolean Condominiums recorded on December 31, 2009 at Reception Number 200928002, and the third Amended Condominium Map Tyrolean Condominiums recorded Nov 21, 2013 at Reception No. 201323338

Section 1.18 Owner. The record owner, whether one or more persons or entities, of fee simple title to any Unit.

Section 1.19 Parking Area. The underground parking facility as shown on the Map, including the general common element ramp, gate and security mechanism, driveway and other improvements located in the underground parking facility, the general common element parking spaces, the limited common element parking spaces, and the Parking Space Units.

Section 1.20 Parking Fee. The flat fee charged to each Parking Residential Unit in lieu of an obligation to pay Common Expense Assessments as provided in Section 7.1.2 of this Declaration. A Parking Space Unit may be subject to Special Assessments as provided in Section 7.5, and to Special Unit Assessments as provided in Section 7.6.

Section 1.21 Parking Space Unit. A condominium located in the lower level (underground) of Building A, as shown on the Map with the prefix "PSU". A Parking Space Unit shall be used solely for the parking of vehicles in accordance with the Governing Documents. Any other parking areas that are located within the Parking Area but are not designated as Parking Space Units are Limited Common Elements or Shared Common Elements as shown on the Map. Like Residential Units, the use of Parking Space Units is subject in all respects to the Covenants, except for the payment of Common Expense Assessments as provided herein. Parking Space Units are owned by Owners. Parking Space Unit Owners shall have no voting rights with respect to any Parking Space Unit.

Section 1.22 Record; Recorded. Filed for record in the real estate records of the Clerk and Recorder of Eagle County, State of Colorado.

Section 1.23 Related User. Any person who: (i) resides with an Owner within the Residential Unit; (ii) is a guest or invitee of an Owner; or (iii) is an occupant, tenant or contract purchaser of a Unit; and (iv) any family member, guest, invitee or cohabitant of any person described in clauses (i), (ii), and (iii) above.

Section 1.24 Residential Unit. The fee simple interest in a residential unit, as shown by each such Residential Unit's identifying number or letter on the Map, together with the Allocated Interests shown on Exhibit B, and any Limited Common Elements that may be appurtenant to such Residential Unit as shown on the Map or as defined in Section 3.6 below. The terms "Residential Unit" or "Residential Units" shall not include "Parking Space Units", unless the context requires otherwise.

Section 1.25 Rules. All rules, regulations and guidelines of the Association, as the same may be adopted and amended from time to time by the Board pursuant to the Act, this Declaration and the Bylaws.

Section 1.26 Unit. The term "Unit" shall mean either a Residential Unit or a Parking Space Unit, as the case may be, and the term "Units" shall mean all Residential Units and Parking Space Units.

## **ARTICLE 2 GENERAL STATEMENT OF COVENANTS**

Section 2.1 Covenants Bind the Real Estate. The Real Estate has been and shall continue to be held, sold, and conveyed subject to the Covenants for the purpose of protecting the value and desirability of the Real Estate and any other purposes incidental thereto. All Covenants shall continue to run with the Real Estate, shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of and be binding upon each Owner thereof and the Association. All Units are subject to the Covenants.

Section 2.2 Inseparability. Each Unit, as well as other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit. Every conveyance, transfer, devise, lease, encumbrance or other disposition of a Unit shall be deemed to be a conveyance, transfer, devise, lease, encumbrance or other disposition, as the case may be, of the entire Unit, together with all appurtenant rights, interests, duties and obligations, created by the Act or other law, or the Governing Documents.

Section 2.3 No Partition. The Shared Common Elements shall be owned in common by all of the Owners and shall remain undivided, except as otherwise provided in applicable provisions of the Act or the Governing Documents. By acceptance of a deed or other instrument of conveyance of a Unit, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that the Association will recover all attorneys' fees and costs and all damages incurred by it in defending an action brought by an Owner in violation of this Section 2.3.

### **ARTICLE 3 DESCRIPTION OF THE CONDOMINIUM**

Section 3.1 Number of Units. There are 9 Residential Units and 4 Parking Space Units in the Community.

Section 3.2 Allocated Interests. The Allocated Interest in the Association allocated to each Residential Unit and to all Parking Space Units collectively is shown on Exhibit B attached hereto and incorporated herein.

Section 3.3 Title to Units/Identification. Every contract, deed, lease, mortgage, deed of trust, will and every other instrument affecting title to a Unit may legally describe that Unit by reference to this Declaration and the one or more of the recorded Maps and by the designated number or letter shown on the Map. Any such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit, but also the Common Elements and the right to the use of the Limited Common Elements that are appurtenant to such Unit. Parking Space Units are specifically designated on the Map as "PSU" and the number (e.g., PSU 2 is the unit identification for Parking Space Unit 2).

Section 3.4 Unit Boundaries. The boundaries of each Residential Unit and each Parking Space Unit are shown on the Map. When interpreting deeds, plats, and plans, Residential Unit boundaries shall be the then existing physical boundaries of a Residential Unit (whether in its original state or reconstructed in substantial accordance with the original plans thereof) and such boundaries shall be conclusively presumed the correct boundaries of a given Residential Unit rather than the boundaries expressed in the deed or plan, without regard to settling or lateral movement of the Building within which the Residential Unit is located and without regard to minor variance between boundaries shown on the plan or deed, and those of the Building. The boundaries of each Residential Unit shall include that part of the Building containing the Residential Unit that lies within the boundaries of the Residential Unit. Each Residential Unit's boundaries consist of the interior unfinished surfaces of the walls, ceilings, floors, windows, and walls, including all electrical outlets, lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finish flooring, and any other material constituting any part of the finished surfaces within a Residential Unit. All other portions of the walls, floors, or ceilings, are part of the Common Elements. All spaces of the Residential Unit and all water and sewer lines, all plumbing fixtures (including toilet flanges, drains) and other fixtures and improvements within the boundaries of the Residential Unit are part of the Residential Unit. Additionally, pursuant to Section 8.1 below, Owners are responsible for the maintenance of all items considered part of the Residential Unit as well as the repair and replacement of any damage caused by water and sewer lines originating in such Owner's

Residential Unit. When interpreting deeds, plats, and plans, Parking Space Unit boundaries shall be the then existing physical boundaries of a Parking Space Unit (whether in its original state or reconstructed in substantial accordance with the original plans thereof) and such boundaries shall be conclusively presumed the correct boundaries of a given Parking Space Unit rather than the boundaries expressed in the deed or plan, without regard to settling or lateral movement of the Building within which the Parking Space Unit is located and without regard to minor variance between boundaries shown on the plan or deed, and those of the Building. The side boundaries of the Parking Space Units shall be the vertical planes extending from the painted parking space lines on the floor of the Parking Area to the unfinished ceiling of the Parking Area. The floor and ceiling shall be the lower and upper boundaries of the Parking Space Units. Pursuant to Section 8.2 below, the Association is responsible for the maintenance of all Parking Space Units.

Section 3.5 Common Elements. The following are Common Elements:

3.5.1 Building A Common Elements:

- (a) exterior surfaces of Building A;
- (b) foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, gutters, downspouts, halls, corridors, lobbies, stairs, stairways, decks, entrances and exits of Building A;
- (c) basement and storage spaces located in Building A;
- (d) installations, equipment and materials making up the central Building A services, such as electricity, gas, hot and cold water, heating, refrigeration, ventilation and air conditioning;
- (e) tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the benefit of Building A;
- (f) easements of support in every portion of a Unit which contributes to the structural support of Building A; and
- (g) all other parts of Building A, which are not part of a Unit which is intended to include all areas for common usage in Building A.

3.5.2 Building B Common Elements:

- (a) exterior surfaces of Building B;
- (b) foundations, columns, girders, beams, supports, perimeter and supporting walls, roofs, gutters, downspouts, decks, halls, corridors, lobbies, stairs, stairways, entrances and exits of Building B;
- (c) basement and storage spaces located in Building B;
- (d) installations, equipment and materials making up the central Building B services, such as electricity, gas, hot and cold water, heating, ventilation, and air conditioning;

(e) tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for the benefit of Building B;

(f) easements of support in every portion of a Residential Unit which contributes to the structural support of Building B; and

(g) all other parts of Building B, which are not part of a Residential Unit or of a Parking Space Unit which intended to include all common areas in Building B.

3.5.3 Shared Common Elements.

(a) the real estate described on Exhibit A;

(b) the landscaping (including the irrigation equipment), driveways and any sidewalks;

(c) the area shown on the Map as the parking garage (excluding only Parking Space Units and Limited Common Element parking spaces, but specifically including General Common Element parking spaces);

(d) any Common Element which is not exclusive to either Building A or Building B (including, but not limited to, all Common Elements which are common to both Buildings); and

(e) easements through Unit boundary walls, ceilings and floors, for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utilities and other services to Units and the Common Elements.

Section 3.6 Limited Common Elements Allocated to Residential Units. Each Owner (or Owners, as the case may be) of Residential Units to which Limited Common Elements have been allocated or to which such Limited Common Element is appurtenant, holds no ownership rights in such Limited Common Element. The allocation of a Limited Common Element to one or more Residential Units permits the Owners of such Residential Unit or Residential Units to possess such Limited Common Element to the exclusion of others. However, maintenance, use, occupancy, and possession of Limited Common Elements shall be done in accordance with the Governing Documents. The following constitute Limited Common Elements:

3.6.1 Such utility installations, pipes, ducts, wiring, conduits and flues located within a Residential Unit or adjoining Residential Units and serving such Residential Unit or Residential Units, such portions of the perimeter walls, floors and ceiling, doors, windows and entryways and all associated fixtures and structures intended to be physically located within the Residential Unit or Residential Units, as may lie outside the Residential Unit boundaries.

3.6.2 Except Building A Common Elements and Building B Common Elements, any portions of the Real Estate which are designated, located or shown on the Map by legend, symbol or word, as appurtenant to one or more, but less than all Residential Units, which are used in connection with such Residential Unit or Residential Units to the exclusion of the use by other Owners of Residential Units, except by invitation.

3.6.3 Any deck or patio that is accessible from, associated with and which physically adjoins a Residential Unit.



## ARTICLE 4 EASEMENTS

Section 4.1 Encroachment Easement. In the event any portion of the Common Elements, including Limited Common Elements, encroaches upon any Unit or any Unit encroaches upon the Common Elements, including Limited Common Elements, or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement, or shifting, provided, however, that in no event shall an easement relieve an Owner of liability in case of negligence or willful misconduct of such Owner. In the event any portion of a structure on the Community is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Elements shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 4.2 Recorded Easements. The Community is subject to all easements as shown on any survey plat or the Map, those provided in the Act (including easements for encroachment set forth in the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Declaration.

Section 4.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in, under and through the Community for the benefit of the Common Elements and the Units and the structures and improvements situated on the Community for ingress and egress, and for the installation and maintenance of utilities (herein "Utilities"), including, but not limited to water, sewer, gas, telephone, electricity, heating, ventilating, air conditioning, computer, internet, and master television antenna, or cable or satellite television systems, if any. Said blanket easement includes future utility services not presently available to the Units which may be available in the future. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on the Common Elements necessary to operate and maintain the Utilities. Further, the Association may grant easements over the Common Elements for the installation, operation and maintenance of any Utilities necessary or desirable for the Community, without the need for any further approval from the Owners or any First Mortgagee. The easements provided for in this Section 4.3 shall not affect, avoid, extinguish or modify any other Recorded easement(s) affecting the Common Elements, nor shall these easements unreasonably interfere with the use and enjoyment of any Unit by the Owner thereof.

Section 4.4 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual nonexclusive right of ingress to and egress from the Owner's Unit over and across the Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for closure for maintenance.

Section 4.5 Emergency Access Easement. A non-exclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons and to any security personnel now or hereafter servicing the Community (without implying any obligation on the part of the Association to provide for security), to enter upon all driveways and Common Elements located in the Community in the performance of their duties.

Section 4.6 Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, subject to the following:

4.6.1 The Governing Documents and the Covenants;

4.6.2 The right of the Association to exercise all powers and duties pursuant to the Governing Documents, the Act and any other applicable law;

4.6.3 The right of the Board to adopt and amend, from time to time, Rules concerning all or any portion of the Real Estate and Owners and Related Users as the Board may determine are necessary or prudent;

4.6.4 The right of the Association to enter into and execute contracts with any party for the purpose of providing management, maintenance or other materials and services to the Association and the Owners consistent with the purposes of the Association, this Declaration and the Act;

4.6.5 The right of the Association to grant permits, licenses and easements over the Common Elements for utilities, public rights of way and other purposes deemed appropriate by the Board;

4.6.6 The right of the Association to dedicate or transfer a part of the Common Elements to the Town of Vail or other appropriate governmental entity;

4.6.7 The right of the Association to mortgage, pledge, or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred (specifically including pledging the Association's income as security for repayment of a debt); and

4.6.8 The right of the Association to close or limit the use of the Common Elements for maintenance.

Section 4.7 Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Elements to Related Users. An Owner who does not occupy such Owner's Unit but permits occupancy of the Unit by a Related User pursuant to a lease entered into in accordance with this Declaration shall be deemed to have delegated his rights to use the Common Elements to such Related User.

## **ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 5.1 Membership. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Each Owner is obligated to comply with the Governing Documents. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void.

Section 5.2 Voting. Subject to the Governing Documents, each Owner of a Residential Unit shall be entitled to vote on all matters that are subject to a vote by the Owners in an amount equal to such Owner's Allocated Interest in the Common Elements. The voting interest allocated to each Residential Unit shall be cast in accordance with the Bylaws. Parking Space Units shall have no voting interest in the Association; Parking Space Units are allocated an undivided interest in the Common Elements solely to comply with legal requirements to constitute a separate condominium unit.

## ARTICLE 6 THE ASSOCIATION

Section 6.1 General Purposes and Powers. The Association, acting in all instances through its Board of Directors unless otherwise required by the Act or this Declaration, and specifically in accordance with the Bylaws, shall perform such functions and manage and operate the Community and the Real Estate as provided in this Declaration. The Association shall have all power necessary or desirable to effectuate such purposes and shall act pursuant to the Governing Documents. All Owners shall be deemed to have assented to, ratified and approved such designation of rights, duties, and authority.

Section 6.2 Address of the Association. The current address of the Association is set forth on the cover page of this Declaration and may be changed in accordance with Section 14.1 below or at any time by Recording any written supplemental information to declaration for the purpose of providing notice of the Association's address.

Section 6.3 Powers; Duties. The Association, acting in all instances by and through the Board, shall have the following specific powers and duties:

6.3.1 The Association shall have all of the powers, authority and duties permitted pursuant to the Act and the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et seq.

6.3.2 The Association shall have all of the powers, authority and duties necessary and proper to manage the business affairs of the Community.

6.3.3 The Association shall have all of the powers, authority and duties necessary and proper to own, operate, manage, lease, encumber, maintain, and otherwise deal with the Common Elements, including the right to acquire additional Common Elements and to make improvements thereon. Such additional Common Elements may be held in the Association's name as attorney-in-fact for the Owners pursuant to Article 13 below.

6.3.4 The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours to the extent deemed necessary for the maintenance of any Common Elements, or at any time and by force, if necessary, to prevent damage to any real or personal property within the Community.

6.3.5 The Association may undertake any activity, function or service for the benefit or to further the interests of the Owners.

6.3.6 The Association shall have the absolute right to engage a community association manager as more particularly provided in the Bylaws.

6.3.7 The Association may assign its right to receive any future income, including its rights to receive Common Expense Assessments, as security for repayment of debt of the Association or otherwise.

6.3.8 In furtherance of its rule-making authority, the Association shall have complete authority and control to issue and amend restrictions on use and occupancy of the Residential Units, Parking Space Units and Common Elements in addition to those contained in this Declaration.

6.3.9 The Association shall establish and enforce Rules as it deems necessary to ensure the proper use, development and maintenance of all real and personal property within the Community.

6.3.10 The Association shall have the right to lease, license or assign, any General Common Element parking space upon such terms and conditions as the Association shall determine.

Section 6.4 Enforcement. The Association shall have the power to enforce provisions in its Governing Documents and shall take such action as the Board deems desirable to cause such compliance by each Owner and each Related User, by any of the following means:

6.4.1 By entry upon any Unit after notice and an opportunity to be heard (unless a bona fide emergency exists), without liability to the Owner thereof, for the purpose of enforcement or causing compliance including by curing said violation;

6.4.2 By commencing and pursuing actions and suits: (i) to recover damages; or (ii) to restrain and enjoin any violation or threatened violation of, or compel compliance with, provisions of the Governing Documents by mandatory injunction or otherwise;

6.4.3 By suspension of the voting rights of an Owner for up to thirty (30) days following any violation of a provision of the Governing Documents, or so long as the violation continues, whichever is longer; and

6.4.4 By levying and collecting, after notice and an opportunity to be heard, fines against any Owner for violation by such Owner or a Related User, as a Common Expense Assessment to be secured by a continuing lien, from the date it is levied, and by foreclosure of such lien.

Section 6.5 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of the Owner thereof or his agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against either the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Elements, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against any Unit, or any part thereof, of any Owner for labor performed or for materials furnished for work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, including attorneys' fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of Assessments.

Section 6.6 Indemnification. To the full extent permitted by law and as provided in the Bylaws, each officer, committee member and member of the Board of the Association shall be and are hereby indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, committee member, or member of the Board of the Association, or any settlements thereof, whether or not they are an officer, committee member, or member of the Board of the Association at the time such expenses are incurred; except in such cases wherein such officer or Board member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties.

## ARTICLE 7 COVENANT FOR PAYMENT OF ASSESSMENTS TO ASSOCIATION

### Section 7.1 Creation of Lien and Personal Obligation for Assessments.

7.1.1 Each Owner, by acceptance of title to any Residential Unit (but not the Parking Space Units) shall be deemed to covenant and agree to pay Assessments to the Association pursuant to the Governing Documents. Such Assessments shall be the personal obligation of the Owner of such Residential Unit at the time when the Assessment becomes due. The Assessments shall be a charge and a continuing lien on each Residential Unit against which each such Assessment is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Association or the Board is not properly exercising its duties and powers under this Declaration.

7.1.2 Each Owner of a Parking Space Unit, by acceptance of title to any Parking Space Unit shall be deemed to covenant and agree to pay, in lieu of other Assessments except Special Assessments and Special Unit Assessments charged against a Parking Space Unit as set forth in Sections 7.5, 7.6 and 8.3 hereof, the Parking Fee as provided herein. The Parking Fee shall be a yearly fee, which shall be set and payable as determined by the Board. The initial Parking Fee for the year 2013 is hereby set at \$250. The Board may, in the Board's sole discretion, increase or decrease this fee by up to and including five percent (5%) per year, and the current amount of the Parking Fee shall be included in the Association's annual budget. The Parking Fee shall be deemed an Assessment hereunder and shall be enforceable by the Association in the same manner as an Assessment.

Section 7.2 Purpose of Assessments. In addition to such other purposes as set forth in the Act, Assessments and the Parking Fee shall be used for the purposes of promoting the health, safety, and welfare of Owners and Related Users, and in particular:

7.2.1 To enforce all provisions of the Governing Documents;

7.2.2 To exercise all rights and powers and to discharge all duties and obligations of the Association, and to pay all expenses therefor, pursuant to the Act and the Governing Documents;

7.2.3 To discharge all expenses incurred by the Association in the maintenance of the Common Elements and portions of the Community the Association is required to maintain and all improvements located thereon, including fixtures and personal property related thereto;

7.2.4 To discharge all expenses incurred by the Association in the maintenance of any property the Association may elect to so maintain pursuant to the Governing Documents;

7.2.5 To pay the costs of providing utilities to and within the Real Estate and to pay the costs of gas, electricity, water and sewer to each Residential Unit;

7.2.6 To pay the costs for providing insurance pursuant to Section 10.1 below (except as such expenses may be assessed against individual Owners); and

7.2.7 To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations.

Section 7.3 Apportionment of Common Expenses. All Common Expense Assessments shall be assessed against all Residential Units in accordance with the formula for Common Expense Liability

as set forth on Exhibit B, except as otherwise provided in this Declaration. Additionally, in the Board's sole discretion:

7.3.1 Any Common Expense for services provided by the Association to an individual Residential Unit or to any Limited Common Element appurtenant to that Residential Unit, pursuant to the Governing Documents or at the request of the Owner may be assessed solely against that Residential Unit.

7.3.2 Any Common Expense for maintenance of a Limited Common Element appurtenant to more than one Residential Unit but less than all may be assessed against the benefited Residential Units.

7.3.3 Any Common Expense for insurance may be assessed in proportion to risk.

7.3.4 Any Common Expense for utility services may be assessed in proportion to usage.

7.3.5 If any utility service, such as gas, electricity, telephone, sewer, water, etc., is separately metered to Residential Unit 9 but shared by Residential Units 1-8, Residential Unit 9 shall pay its separately metered utility charges and not be subject to utility assessments for any such utilities to Residential Units 1-8.

7.3.6 If a Common Expense is caused by the negligence or misconduct of an Owner, the Association may assess that expense exclusively against that Owner and that Unit as a Special Unit Assessment, as set forth in Section 8.3 hereof, in addition to sums charged to the Owner pursuant to Section 7.6 hereof.

7.3.7 Fees, charges, taxes, impositions, late charges, fines, attorneys' fees, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

Section 7.4 Annual Assessment. The Common Expense Assessment shall be made on an annual basis against all Residential Units based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year. Common Expense Assessments shall be due and payable annually or in periodic installments, or in any other manner, as determined by the Board. Annual Assessments shall be levied pursuant to the budget adopted by the Board each year.

Section 7.5 Special Assessments. The Board shall have the further right during any calendar year, upon not less than thirty (30) days' notice to the Owners, to levy and assess against the Owners, in a manner similar to Assessments for Common Expenses, a special assessment ("Special Assessment") for such purpose or purposes as may be necessary or appropriate to maintain the Community to such standard as the Board deems appropriate. Special Assessments may include, without limitation, the cost of construction, installation and maintenance of any Common Elements, including fixtures and personal property, to the extent such cost is in excess of the amount contemplated by the approved budget for such calendar year or any expense deemed necessary by the Board. Parking Space Units shall be subject to Special Assessments, but only for extraordinary expenses (not recurring annual expenses) related to the Parking Area and for no other Common Elements, such as for replacement of the gate or the driveway or elements thereof, including the snowmelt system and boiler, and upon such terms and sharing ratios as the Board shall reasonably determine.

Section 7.6 Special Unit Assessment. Special Unit Assessments shall be collectible as a Common Expense Assessment. A Special Unit Assessment may be assessed against a Parking Space Unit. The Association shall have the right to levy and collect a Special Unit Assessment against a particular Owner or Unit or against one or more but fewer than all Owners and their Residential Units or Parking Space Units (which shall also be a personal obligation of such Owners assessed), any expense:

7.6.1 To cure any violation of the Governing Documents;

7.6.2 To reimburse the Association for costs incurred in bringing an Owner and his or her Unit into compliance with the provisions of the Governing Documents;

7.6.3 To reimburse the Association for an expense incurred on behalf of an Owner or Owners under the Governing Documents (including, but not limited to, any expense which is incurred by the Association for maintenance of any portion of the Community which is caused by or in any way results from the actions or failure to act of an Owner or such Owner's Related Users);

7.6.4 To levy fines and other penalties and charges pursuant to the Governing Documents (provided, however, levying a fine shall be after notice to the Owner and an opportunity to be heard by the Board or other body);

7.6.5 To reimburse the Association for an expense incurred on behalf of an Owner under the Governing Documents which benefits one or more, but less than all Owners and which is not otherwise a Common Expense allocated pursuant to Section 7.3 above; or

7.6.6 To reimburse the Association for an expense incurred in providing such insurance on behalf of an Owner as provided in Section 9.3 below, in the event that an Owner fails to provide insurance coverage as required by the Governing Documents.

Section 7.7 Effect of Non-Payment of Assessments. Any Assessment provided for in this Declaration, or any installment thereof, which is not fully paid within ten (10) days after the due date thereof, shall bear interest at the rate of twenty-one percent (21%) per annum or at such lesser rate as may be set by the Board from time to time from the due date, and the Association may assess a monthly late charge thereon. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Assessment for any remainder of that fiscal year to become immediately due and payable, at the option of the Board. Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, or any monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, or any monthly or other installment thereof, may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien therefor. The Association's costs of suit, expenses and reasonable attorneys' fees incurred simply by virtue of the failure of the Owner to timely pay Assessments when due, including attorneys' fees and costs for preparing and recording any lien notice, and the Association's costs of suit, expenses and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings, shall be taxed by the court as a part of the costs of any such action or foreclosure proceeding and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds of the foreclosure sale of such Owner's Unit. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessments, or any monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, and to convey or otherwise deal with the same. The grantee

of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit which accrued prior to the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Whether or not the Association forecloses its lien, it may apply for the ex parte appointment of a receiver for a Unit and the Owner of such Unit shall be liable for all costs and expenses in securing and continuing this appointment, including receiver's fees, attorneys' fees, and costs.

Section 7.8 Lien Priority. The lien for all Assessments levied by the Association pursuant to the Act and as described by this Article 7 is prior to all other liens and encumbrances on the Residential Unit except:

7.8.1 Liens and encumbrances Recorded before the recordation of the Original Declaration;

7.8.2 Liens for real estate taxes and other governmental assessments or charges against the Residential Unit;

7.8.3 A First Mortgage on the Unit Recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Association's lien is made superior by the Act, *i.e.*, the Act provides that the Association's lien shall be prior to all First Mortgagees recorded on or after July 1, 1992 to the extent of six (6) months' of Common Expense Assessments.

This Section does not affect the priority of mechanics' or materialmen's liens. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessment under this Section 7.8 is required, except a notice of delinquent Assessment must be Recorded before commencement of foreclosure. Sale or transfer of any Unit shall not affect the Assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish that portion of the Association's lien that is subordinate to the First Mortgage unless the Association shall exercise redemption or other rights in foreclosure to protect its interests. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Owner from continuing liability for any Assessments thereafter becoming due nor from Assessments which were levied prior to the sale and remain unpaid. No sale or transfer shall relieve such Unit from lien rights for any Assessments thereafter becoming due. Where a First Mortgagee or other purchaser of a Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, his successors and assigns, shall not, except as provided by Subsection 7.8.3 above, be liable for Assessments levied by the Association which became due prior to the acquisition of title to such Unit by such acquirer. Any unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Residential Units including such acquirer, his successors and assigns.

Section 7.9 Statement of Unpaid Assessments. The Association shall provide Statements of Unpaid Assessments as provided by the Act.

Section 7.10 Failure to Fix Assessment. The omission or failure to establish any Assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification, or release of the Owners from their obligations to pay the same.

Section 7.11 No Waiver or Abandonment. No Owner may be exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit against which the Assessments are made.