

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
CONFLUENCE FORT COLLINS CONDOMINIUM**

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**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CONFLUENCE FORT COLLINS CONDOMINIUM**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CONFLUENCE FORT COLLINS CONDOMINIUM (this “**Declaration**”) is made as of January 13, 2020, by Confluence FC, LLC, a Colorado limited liability company (together with its successors and assigns, “**Declarant**”).

Recitals

- A. Declarant owns the real property located in Larimer County, Colorado, that is more particularly described on Exhibit “A” attached hereto (the “**Property**”).
- B. Declarant desires to create a condominium on such property pursuant to the Colorado Common Interest Ownership Act, Colorado Revised Statutes §38-33.3-101, *et seq.* (the “**Act**”).
- C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

Declaration

In consideration of the foregoing, Declarant hereby declares as follows:

ARTICLE I  
DECLARATION

1.01 Declaration.

Declarant hereby creates a condominium named “Confluence Fort Collins Condominium” on the Property and declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions, reservations, easements, assessments, charges, liens and other provisions of this Declaration.

1.02 Covenants Running with the Land.

All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners (as such term is defined in Section 2.01 below), the Association (as such term is defined in Section 2.01 below), and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.

ARTICLE II  
DEFINITIONS

2.01 Basic Definitions.

As used in this Declaration, the following terms have the meanings given to them in this Section 2.01.

- (a) “**Act**” has the meaning given to that term in Recital B above.

(b) **“Additional Property”** means the real property described on Exhibit “B” attached hereto.

(c) **“Applicable Law”** means all federal, state or local law or statute, ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Property or the Condominium, including but not limited to the Act.

(d) **“Area,”** when reference is made to a Unit or to Commercial Space, means the total number of finished square feet thereof as shown on the Map, or if such square footage is not shown on the Map, then **“Area,”** when reference is made to a Unit or to Commercial Space, means the total number of finished square feet of such Unit or Commercial Space, as determined by the Executive Board in its sole and absolute discretion.

(e) **“Articles”** means the articles of incorporation of the Association.

(f) **“Assessment”** means a General Assessment, a Limited Assessment or a Default Assessment levied and assessed pursuant to Article VII below.

(g) **“Assessment Lien”** has the meaning given to that term in Section 7.09 below.

(h) **“Association”** means Confluence Fort Collins Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(i) **“Association Documents”** means this Declaration, the Articles, the Bylaws and the Rules and Regulations.

(j) **“Association Property”** means all of the real and personal property that the Association either owns, leases or otherwise has a right to use at any time and from time to time.

(k) **“Bylaws”** means the bylaws of the Association.

(l) **“City”** means the City of Fort Collins, Colorado.

(m) **“Commercial Common Elements”** means the Limited Common Elements appurtenant to the Commercial Units and designated for the use by some or all Commercial Units but not Residential Units. Commercial Common Elements include any physical portion of the Condominium that is designated as “LCE-C” or “LCE-C-\_\_” (Commercial Common Element appurtenant to the Commercial Unit or Units specified in the blank) on the Map.

(n) **“Commercial Common Expenses”** means the Common Expenses that are incurred for the benefit of only the Commercial Units, as determined by the Executive Board.

(o) **“Commercial Director”** has the meaning given to that term in Section 6.02(b) below.

(p) **“Commercial Space”** means all or any portion of a Commercial Unit that is designated or used for separate occupancy or separate and distinct commercial operations. Commercial Space includes any Limited Common Element allocated to the Commercial Unit in which the Commercial Space is located to the extent the same is used in connection with that Commercial Space.

(q) “**Commercial Units**” means a Units designated on the Map as a “Commercial Unit,” “Commercial” or “CU.”

(r) “**Common Elements**” means the General Common Elements and the Limited Common Elements.

(s) “**Common Expenses**” means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the Association, including costs, expenses and liabilities for (A) managing, operating, insuring, constructing, improving, repairing, replacing, altering, renovating and maintaining the Common Elements and the Association Property; (B) paying any taxes or assessments levied against the Association Property; (C) providing facilities, services and other benefits to Owners; (D) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (E) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (F) regulating and managing the Condominium; (G) operating the Association; (H) taking any action it deems necessary or appropriate to protect the general welfare of Owners, Guests and the general public; (I) performing and observing obligations or conditions to be performed or observed, and paying any fees or other charges to be paid by the Association under this Declaration or any easement, contract, agreement, or other instrument, including those easements and agreements described on Exhibit “D” attached hereto and any façade agreement or easement established pursuant to Section 11.01 or otherwise; and (J) complying with Applicable Law; and

(ii) reserves for any such costs, expenses and liabilities.

(t) “**Condominium**” means Confluence Fort Collins Condominium, the common interest community created on the Property by this Declaration, consisting of the Units and the Common Elements.

(u) “**Contractor**” means any Person, including a general contractor and subcontractors, retained or engaged for the construction of the Condominium.

(v) “**County Records**” means the Office of the Clerk and Recorder for Larimer County, Colorado.

(w) “**CPI**” means the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (1982-84=100), Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the United States Department of Labor. If publication of the CPI is discontinued or published less frequently, then the Association shall adopt a substitute index published by a United States governmental body or recognized United States financial institution that reasonably reflects and monitors consumer prices in the United States.

(x) “**CPI Adjustment Factor**” means a fraction, the numerator of which is the CPI available for the month that is 90 days prior to the date the adjustment is to become effective and the denominator of which is the CPI for the same month in the immediately preceding year.

(y) “**Declarant**” has the meaning given to that term in the introductory paragraph above.

(z) “**Declarant Control Period**” has the meaning given to that term in Section 6.04 below.

(aa) **“Declaration”** has the meaning given to that term in the introductory paragraph above.

(bb) **“Default Assessment”** has the meaning given to that term in Section 7.07 below.

(cc) **“Design Consultant”** means any Person engaged to assist in the design or construction of any Improvement, including architects, landscape designers, engineers and similar design professionals.

(dd) **“Director”** means a duly elected or appointed member of the Executive Board.

(ee) **“Environmental System”** means the system, including the pipes, facilities and equipment related thereto, wherever located, that provides heating and cooling services to the Condominium.

(ff) **“Executive Board”** means the Association’s board of directors.

(gg) **“First Mortgage”** means any Mortgage that is not subordinate to any other lien or encumbrance, except liens for taxes or other liens that are given priority by statute.

(hh) **“First Mortgagee”** means a Mortgagee under a First Mortgage.

(ii) **“General Assessment”** has the meaning given to that term in Section 7.04 below.

(jj) **“General Common Elements”** means all of the Condominium, other than (i) those portions of the Condominium that are designated by the Act, by this Declaration or by the Map as Units or Limited Common Elements or (ii) those Improvements, fixtures and equipment that are owned by a third party, or a utility or service provider, and are located on the Property pursuant to an easement, license or any other agreement, whether written or oral. Without limiting the generality of the preceding sentence, the General Common Elements include all Improvements, including the foundations, floors, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, drainage facilities, roofs, chimneys, facades, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, except for those Improvements that are designated by the Act, by this Declaration, by the Map or, in the case of Improvements, fixtures and equipment that are owned by a third party, the document evidencing title thereto, as Units or Limited Common Elements.

(kk) **“General Common Expenses”** means the Common Expenses incurred for the benefit of all Units, as determined by the Executive Board.

(ll) **“Guest”** means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

(mm) **“Improvement”** means any building, structure or other improvement (including all fixtures and improvements contained therein) located on the Property.

(nn) **“Initial Units”** has the meaning given to that term in Section 3.01(a) below.

(oo) **“Interest in Common Elements”** means the undivided interest in the Common Elements appurtenant to each Unit, determined in accordance with the terms and conditions of Section 3.02 below.

(pp) **“Limited Assessment”** has the meaning given to that term in Section 7.05 below.

(qq) **“Limited Common Elements”** means those portions of the Condominium designated by this Declaration, the Map or operation of the Act for the exclusive use of one or more Units, but fewer than all of the Units, except those Improvements, fixtures and equipment that are owned by a third party, or a utility or service provider, and are located on the Property pursuant to an easement, license or any other agreement, whether written or oral, shall not be Limited Common Elements. Without limiting the generality of the foregoing, Limited Common Elements include:

(i) any shutters, awnings, window boxes, windows and doors located at the boundaries of the Units;

(ii) whether located within a Unit or otherwise, any utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, drainage facilities, roofs, chimneys, facades, patios, balconies, decks, porches, courtyards, pools, hot tubs, spas, recreational facilities, stoops, exits, entrances, elevators, waiting areas, laundry facilities, restrooms, hearth rooms, fireplaces, libraries, storage lockers (which are located in the basement level storage area and are a Limited Common Element allocated to the Residential Unit identified thereon), walkways, and other areas and Improvements that are designed to serve fewer than all of the Units, including, without limitation, the air-conditioning units located on the roof of the Improvements that each serve an individual Unit; and

(iii) any physical portion of the Condominium that is designated on the Map as “Limited Common Element,” “LCE,” “LCE-\_\_\_” (Limited Common Element appurtenant to the Unit or Units specified in the blank), “LCE-R” (Residential Common Element), or “LCE-C” (Commercial Common Element).

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a utility or mechanical system or any fixture lies partially within and partially outside of 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 all of the other Units or any portion of the Common Elements is a part of the General Common Elements. Nonstructural walls located wholly within a Unit are Limited Common Elements allocated to the Units in which they are located.

(rr) **“Maintenance Manual”** refers to the manual or manuals that may be prepared by the Declarant or its agents, and provided to the Association and to each Owner specifying obligations for maintenance of the Common Elements and Units, as updated and amended from time to time.

(ss) **“Majority”** means any percentage greater than 50%.

(tt) **“Map”** means the condominium map for Confluence Fort Collins Condominium recorded in the County Records, consisting of (i) a lot plan showing the boundaries of the Property, the location of the Improvements on the Property, and the location of certain easements on the Property, and (ii) a set of floor plans for the Condominium showing the layout, location, and identifying numbers and dimensions of the Units, as the same may be amended or supplemented from time to time.

(uu) **“Mortgage”** means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

(vv) **“Mortgagee”** means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

(ww) **“Notice and Opportunity to be Heard”** has the meaning given to that phrase in Section 6.07 below.

(xx) **“Officer”** means a duly elected or appointed officer of the Association.

(yy) **“Owner”** means the record holder of legal title to the fee simple interest in any Unit or any portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner. The term **“Owner”** includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Unit.

(zz) **“Parking Agreement”** has the meaning given to that term in Section 10.13(a).

(aaa) **“Parking Spaces”** shall mean and refer to those parking spaces located in or adjacent to the parking structure on the Property. Parking Spaces are Limited Common Elements or General Common Elements, as reflected on the Map.

(bbb) **“Person”** means any natural person, corporation, partnership, limited liability company, association, trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(ccc) **“Property”**:

(i) has the meaning given to that term in Recital A above; together with

(ii) any real property that is later made subject to this Declaration in accordance with the terms and conditions contained herein.

(ddd) **“Purchaser”** means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Unit or portion thereof.

(eee) **“Residential Common Elements”** means the Limited Common Elements appurtenant to the Residential Units and designated for the use of all Residential Units but not Commercial Units. Residential Common Elements include any physical portion of the Condominium that is designated as “LCE-R” or “LCE-R-\_\_\_” (Residential Common Element appurtenant to the Unit or Units specified in the blank).

(fff) **“Residential Common Expenses”** means the Common Expenses that are incurred for the benefit of only the Residential Units, as determined by the Executive Board.

(ggg) **“Residential Director”** has the meaning given to that term in Section 6.02(a) below.

(hhh) **“Residential Units”** means any Unit other than a Commercial Unit.

(iii) **“Rules and Regulations”** means any instruments adopted by the Association for the regulation and management of the Condominium.

(jjj) **“Share of Commercial Common Expenses”** means the share of Common Expenses allocated to each Commercial Unit in accordance with the terms and conditions of Section 7.02(c) below.

(kkk) **“Share of General Common Expenses”** means the share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.02(a) below.

(lll) **“Share of Residential Common Expenses”** means the share of Common Expenses allocated to each Residential Unit in accordance with the terms and conditions of Section 7.02(b) below.

(mmm) **“Special Declarant Rights”** means all “special declarant rights” (as such term is defined in the Act) that Declarant reserves for itself in this Declaration.

(nnn) **“Successor Declarant”** means any Person who succeeds to any Special Declarant Right or any other rights reserved to Declarant under this Declaration.

(ooo) **“Total Area of all Units”** means the combined Area of all Units in the Condominium, as determined in accordance with Section 2.01(d) above.

(ppp) **“Total Area of Commercial Units”** means the combined Area of all Commercial Units in the Condominium, as determined in accordance with Section 2.01(d) above.

(qqq) **“Total Area of Residential Units”** means the combined Area of all Residential Units in the Condominium, as determined in accordance with Section 2.01(d) above.

(rrr) **“Unit”** means a physical portion of the Condominium that:

- (i) is created by this Declaration;
- (ii) is designated for separate ownership; and
- (iii) has boundaries that are described in this Declaration or shown on the

Map.

If walls, floors or ceilings are designated as boundaries of a Unit, all paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

## 2.02 Usage.

Wherever the context of this Declaration so requires:

- (a) references to one gender include all genders;
- (b) words used in the singular shall include the plural and words used in the plural shall include the singular;
- (c) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted under this Declaration;
- (d) “including” is not limiting;

- (e) “or” has the inclusive meaning represented by the phrase “and/or”;
- (f) the words “hereof,” “herein,” “hereby,” “hereunder” and similar terms in this Declaration refer to this Declaration as a whole and not to any particular provision of this Declaration;
- (g) Article, Section, clause, paragraph and Exhibit references are to this Declaration unless otherwise specified; and
- (h) references to any agreement, document or instrument (including this Declaration) means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

ARTICLE III  
UNITS AND COMMON ELEMENTS

3.01 Units.

(a) Declarant hereby creates 26 Residential Units and 4 Commercial Units (collectively, the “**Initial Units**”) within the Condominium, the boundaries and identifying numbers of which are shown on the Map.

(b) Declarant reserves the right to create a maximum of 26 Residential Units and 10 Commercial Units, for a total of 36 Units, within the Condominium, as the same may be expanded from time to time.

(c) No Owner may alter a Unit, subdivide a Unit or relocate the boundaries between adjacent Units, except as may be provided by this Declaration.

(d) Except as expressly provided to the contrary in this Declaration, the Interest in Common Elements and the right to use Limited Common Elements appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof.

(e) Notwithstanding anything to the contrary elsewhere in this Declaration:

(i) nothing herein shall prevent or limit Declarant’s exercise or enjoyment of any Special Declarant Right or any other right reserved to Declarant in this Declaration;

(ii) an Owner may grant its rights to use any General Common Element or any Limited Common Element allocated to the Owner’s Unit to the Owner’s Guests; and

(iii) subject to Section 10.13(a), an Owner of a Residential Unit may grant its rights to use a Parking Space allocated to such Owner’s Residential Unit to another Owner or to the Association.

3.02 Interests in Common Elements.

The Owners shall own the Common Elements as tenants in common, with each Owner owning the Interest in Common Elements allocated to its Unit.

(a) The Interests in Common Elements shall be allocated among the Units as set forth in this Section 3.02. The Interest in Common Elements appurtenant to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Interest in Common Elements} = \frac{(\text{Area of the Unit})}{(\text{Total Area of all Units})} \times 100$$

(b) The Interest in Common Elements appurtenant to each of the Initial Units is set forth on Exhibit "C" attached hereto.

(c) If any Units are added to or withdrawn from the Condominium, or combined or subdivided, or if the Area of one or more Units is increased or decreased, the Interest in Common Elements for all Units within the Condominium after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Section 3.02(a) above.

(d) An Interest in Common Elements may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an Interest in Common Elements made without the Unit to which the Interest in Common Elements is appurtenant shall be void.

### 3.03 Limited Common Elements.

(a) Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Elements to the Units pursuant to this Declaration or the Map or by operation of the Act may not be altered without the consent of all Owners whose Units would be affected by such reallocation, and then only in accordance with the terms and conditions of the Act.

(b) Except as expressly provided to the contrary in this Declaration, an Owner's right to use the Limited Common Elements allocated to the Owner's Unit may not be partitioned or separated from the Unit or any part thereof.

### 3.04 Separate Taxation of Units.

Pursuant to the Act, each Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

### 3.05 Description of Units.

To convey, encumber or otherwise affect legal title to a Unit, an instrument must describe the Unit substantially as follows:

[Unit/Commercial Unit] \_\_\_\_, Confluence Fort Collins Condominium, according to the Declaration of Covenants, Conditions and Restrictions for Confluence Fort Collins Condominium, recorded in the records of the Clerk and Recorder for the Larimer County, Colorado, and the Condominium Map separately recorded in the records of the Clerk and Recorder for Larimer County, Colorado.

## ARTICLE IV THE ASSOCIATION

### 4.01 Formation of the Association.

On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Association.

4.02 Purposes and Powers.

(a) The Association's purposes are to:

(i) manage, operate, insure, construct, improve, repair, replace, alter, renovate and maintain the Common Elements and the Association Property;

(ii) provide certain facilities, services and other benefits to Owners, Guests and the general public;

(iii) administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;

(iv) levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) establish, publish, administer, amend and modify the Rules and Regulations as the Association deems necessary or desirable consistent with this Declaration, the Articles, the Bylaws and the Act.

(vi) regulate and manage the Condominium; and

(vii) take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners, Guests and the general public.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes, including the hiring and terminating of employees, agents and independent contractors and the adoption and enforcement of Rules and Regulations;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

(c) Without in any way limiting the generality of Section 4.02(b) above, the Association may, but unless otherwise required elsewhere in this Declaration, is not obligated to:

(i) provide certain facilities and services to the Owners, such as (A) recreational facilities and services, (B) water, sewer, gas, electric, telephone, internet, cable television and other utility facilities and services, (C) parking facilities and services, (D) trash collection facilities and services, and (E) snow removal facilities and services;

(ii) acquire, sell, lease and grant easements over, across and through Common Elements;

(iii) acquire, own, sell, lease and grant easements over, across and through the Association Property and any other real property;

(iv) enter into agreements with other Persons, including easements, licenses, leases and other agreements with one or more condominium associations or governmental or quasi-governmental entities, which may provide for the sharing of expenses between or among the Association and such other Persons for improvements, facilities and services that serve the Association and such other Persons;

(v) borrow monies and grant security interests in the Common Elements, the Association Property and the other assets of the Association as collateral therefor;

(vi) make capital improvements, repairs and replacements to the Common Elements; and

(vii) hire and terminate managing agents and other employees, agents and independent contractors.

(d) Without in any way limiting the powers of the Association as described in Section 4.02(b) above, the Association may, but is not obligated to, charge use fees for the use of any Common Element, for the use of any portion of the Association Property, and for the use of any facilities or services provided by the Association.

(e) The Association may provide facilities and services itself or it may contract with private, governmental or quasi-governmental Persons to provide facilities or services.

#### 4.03 Association Documents.

(a) This Declaration creates the Condominium and sets forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Property. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Condominium.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

#### 4.04 Books and Records.

(a) The Association shall keep as permanent records each of the following:

(i) minutes of all meetings of Owners and the Executive Board;

(ii) a record of all actions taken by the Owners or Executive Board by written ballot or written consent in lieu of a meeting;

(iii) a record of all actions taken by a committee of the Executive Board in place of the Executive Board on behalf of the Association;

(iv) a record of Owners in a form that permits preparation of a list of the names, addresses and the number of votes of all Owners; and

(v) a record of all waivers of notices of meetings of Owners, the Executive Board or any committee of the Executive Board.

(b) The Association shall keep a copy of each of the following records at its principal office:

(i) the Articles;

(ii) this Declaration;

(iii) the Bylaws;

(iv) such resolutions, minutes, written communications, financial statements, claims records, records of receipts and expenditures, audits and other records, documentation and information of the Executive Board and the Association as is required by Applicable Law, including, without limitation, Section 317 of the Act;

(v) a list of names, email addresses and business or home addresses of its current Directors and Officers;

(vi) the Association's most recent annual report, if any; and

(vii) the Association's most recent reserve study, if any.

(c) Upon request, during normal business hours and under other reasonable circumstances, the Association shall allow any Owner, Mortgagee or their respective agents to inspect current copies of the foregoing records, except to the extent the Association is permitted or required to withhold such records from inspection pursuant to Section 317 of the Act or the other Association Documents. The Association may charge a reasonable fee for copying such materials at a cost not to exceed the Association's actual expenses incurred for such copying.

(d) A draft of the minutes of any Executive Board or Owners' meeting shall be available for inspection within 15 days after any such meeting.

(e) The Association shall cause to be maintained a record of all Owners, by name and address, and which lists the total number of votes each such Owner is entitled to vote.

(f) To the extent required by Applicable Law, the books and records of the Association shall be subject to (i) review, using statements on standards for accounting and review services by an independent and qualified Person selected by the Executive Board, or (ii) upon the request of one-third of the Owners, a full audit performed in accordance with generally accepted accounting principles, by a certified public accountant selected by the Executive Board. The results of such review or audit shall be made available to the Owners, upon request, not later than 30 days after such audit is completed.

4.05 Association Property

. The Association shall, on behalf of all Owners, hold title to all Association Property in its name, and no Owner shall have any right, title, or claim thereto. The Association shall have the exclusive right to deal with Association Property for all purposes.

4.06 Owner Education.

To the extent required by applicable law, at least once per calendar year, the Association shall provide at no cost, or cause to be provided at no cost, education to Owners as to the general operations of the Association and the responsibilities of Owners, the Association and the Executive Board under Applicable Law.

4.07 Disclosures to Owners.

(a) Not later than 90 days after the expiration of the Declarant Control Period, and within 90 days after any change thereto, the Association shall provide to all Owners the information set forth in Section 209.4(1) of the Act, in the manner set forth in Section 209.4(3) of the Act.

(b) Not later than 90 days after the expiration of the Declarant Control Period, and within 90 days after the end of each fiscal year thereafter, the Association shall make available to Owners the information set forth in Section 209.4(2) of the Act, in the manner set forth in Section 209.4(3) of the Act.

ARTICLE V  
VOTING

5.01 Voting in General.

(a) The votes in the Association shall be allocated as described in this Article V.

(b) There shall be 2 classes for allocating votes in the Association: (i) Residential Units; and (ii) Commercial Units.

(c) The votes allocated to a Unit shall be held by the Owner(s) of such Unit and may not be separated from the Unit to which the votes are allocated. The votes allocated to a Unit may be transferred or encumbered only in connection with the conveyance or encumbrance of the fee simple interest in such Unit. Any transfer or encumbrance of votes in the Association, other than as permitted in this Section 5.01(c), shall be void and have no force or effect.

(d) Notwithstanding the terms and conditions of Section 5.01(c) above, the Owner of a Unit may appoint an agent (which shall be another Owner in the Condominium) to vote the votes allocated to the Owner's Unit by a duly executed proxy, in such form as the Association may reasonably require, timely delivered to the Association.

(e) Class voting shall be allowed for the election and removal of Directors pursuant to Article VI below and for any other matter that affects only one class, but for no other purpose. The decision on whether an issue relates solely to a particular class or otherwise fits within the categories of the class issues described in this Declaration shall be determined in the reasonable discretion of the Executive Board based on the provisions of the Association Documents.

(f) Cumulative voting shall not be allowed in the election of Directors or for any other purpose.

(g) The Association shall have no voting rights for any Unit owned by the Association.

(h) The votes allocated to each of the Initial Units are set forth on Exhibit "C" attached hereto.

5.02 Residential Voting.

(a) Regardless of the number of Owners of a Residential Unit, each Residential Unit shall be allocated one (1) vote.

(b) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the number of votes allocated to each Residential Unit, after such addition, withdrawal, increase or decrease, shall be recalculated such that each Residential Unit shall be allocated 1 vote, regardless of the number of Owners of that Residential Unit.

(c) Fractional voting shall not be allowed for any vote allocated to a Residential Unit. If the Owners of a Residential Unit cannot agree among themselves as to how to cast their vote on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Residential Unit casts the vote for that Residential Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Residential Unit, unless an Owner of that Residential Unit makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than one vote is cast for any Residential Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

5.03 Commercial Voting.

(a) The total number of votes allocated among the Commercial Units shall be calculated as follows:

$$\text{Total Number of Votes for all Commercial Units} = .51 \times \text{Number of Votes Allocated to the Residential Units}$$

(b) Each Commercial Unit shall be entitled to the number of votes calculated as follows:

$$\text{Number of Votes} = \frac{\text{Total Number of Votes for all Commercial Units}}{\text{Total Area of Commercial Units}} \times \text{(Area of the Commercial Unit)}$$

(c) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the total number of votes allocated among the Commercial Units, and the number of votes allocated to each Commercial Unit, as applicable, after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formulas set forth in Sections 5.03(a) and (b) above.

(d) Except as set forth in Section 5.03(e) below, fractional voting shall not be allowed for any votes allocated to a Commercial Unit. If the Owners of the Commercial Unit cannot

agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner of a Commercial Unit casts the votes for that Commercial Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners of that Commercial Unit, unless an Owner of that Commercial Unit makes an objection thereto to the Person presiding over the meeting when the votes are cast. If more than the votes allocated to a Commercial Unit are cast for the Commercial Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

(e) The Owner of a Commercial Unit may appoint its lessee as its agent to vote all or any portion of the votes allocated to the Commercial Unit by proxy in accordance with the terms and conditions of Section 5.01(d) above. In that regard, fractional voting shall be allowed for the votes allocated to the Commercial Unit. Notwithstanding the foregoing, if more votes are cast for the Commercial Unit than are allocated to the Commercial Unit, none of such votes shall be counted and all of such votes shall be deemed null and void.

5.04 Secret Ballots.

(a) When any vote is taken by the Owners for the election of a contested position on the Executive Board, such election shall be held by secret ballot. In addition, at the discretion of the Executive Board or upon the request of at least 20% of the Owners who are present at the meeting or represented by proxy, if a quorum has been achieved, any other vote to be taken by the Owners shall be conducted via secret ballot. The results of any vote taken by the Owners shall be counted by a neutral third Person or a committee of Owners who are volunteers selected or appointed at an open meeting in a fair manner by the chairperson of the Executive Board or another person presiding during that portion of the meeting. The volunteers shall not be Executive Board members and, in the case of a contested election for a Director, shall not be candidates. In announcing the results of any vote taken by the Owners, no identifying information shall be disclosed by the Association that would reveal how any particular Owner voted.

ARTICLE VI  
EXECUTIVE BOARD

6.01 Powers of the Executive Board.

(a) Except as provided by law or in this Declaration, the Articles and the Bylaws, the Executive Board may act on behalf of the Association in all instances.

(b) The Executive Board may not act on behalf of the Association to:

- (i) amend this Declaration;
- (ii) terminate the Association, this Declaration or the Condominium;
- (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term as set forth in Section 6.06 below; or
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

6.02 Number of Directors.

The Executive Board shall consist of the following 3 Directors:

(a) 2 Directors elected by and representing the Owners of the Residential Units (each, a “**Residential Director**”); and

(b) 1 Director elected by and representing the Owners of the Commercial Units (the “**Commercial Director**”).

6.03 Election of Directors.

(a) Subject to the terms and conditions of Sections 6.04 and 6.05 below, the Residential Directors shall be elected as follows:

(i) The terms of the Residential Directors shall be staggered. At the initial election or appointment of the Residential Directors, the Residential Directors shall be divided into 2 groups. Each group shall consist of 1 Residential Director.

(A) The initial Residential Director in the first group will hold office until the election or appointment of his successor at the 2020 annual meeting. Thereafter, the Residential Director in the first group will hold office for a term of 2 years, and the Owners of the Residential Units shall elect such Residential Director at the annual meeting held in years ending in an even number.

(B) The initial Residential Director in the second group will hold office until the election or appointment of his successor at the 2021 annual meeting. Thereafter, the Residential Director in the second group will hold office for a term of 2 years, and the Owners of the Residential Units shall elect such Residential Director at the annual meeting held in years ending in an odd number.

(b) Subject to the terms and conditions of Sections 6.04 and 6.05 below, the Commercial Director will hold office until the election or appointment of his successor at the 2021 annual meeting. Thereafter, the Commercial Director will hold office for a term of 2 years and the Owners of the Commercial Units shall elect such Commercial Director at the annual meeting held in years ending in an odd number.

(c) Each Director shall hold office until that Director’s successor is elected and qualified, or until that Director’s earlier death, resignation or removal.

6.04 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.04(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Officers and Directors during the Declarant Control Period. The phrase “**Declarant Control Period**” means the period commencing on the date on which Declarant forms the Association and ending on the earliest to occur of:

(i) the date that is 60 days after conveyance to Purchasers of 75% of the maximum number of Units that may be created by Declarant under this Declaration;

(ii) the date that is 2 years after the last conveyance of a Unit by Declarant or a Successor Declarant in the ordinary course of business; or

(iii) the date that is 2 years after any right to add new Units was last exercised.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) Notwithstanding anything to the contrary contained in Section 6.04(a) above, not later than 60 days after the conveyance of 25% of the Units that may be created under this Declaration to Purchasers, one Director appointed by Declarant shall be replaced with a Director elected by Owners other than Declarant.

(d) During the 30-day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect an Executive Board of 3 Directors as provided in Section 6.03, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon election.

(e) Solely to the extent required by Applicable Law, not later than 60 days after the end of the Declarant Control Period, Declarant shall deliver to the Association all property of the Owners and the Association then held or controlled by Declarant, including (to the extent specifically enumerated in the Act) the following:

(i) the original, or a certified copy, of this Declaration and any amendments hereto;

(ii) the Articles of Incorporation, Bylaws, Rules and Regulations, policies, procedures, minutes of meetings of the Association or Executive Board and any other books and records maintained by Declarant for the Association;

(iii) an accounting for Association funds and financial statements, beginning on the date the Association first received any funds and ending on the date the Declarant Control Period expired, as more particularly described in the Act;

(iv) the funds of the Association or control thereover;

(v) all of Declarant's tangible personal property that has been represented by Declarant to be the property of the Association, if any, or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of such property;

(vi) a copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the Improvements in the Condominium installed by Declarant or at Declarant's direction;

(vii) all insurance policies then in force, in which the Owners, the Association, or its directors and officers are named as insured persons;

(viii) copies of any certificates of occupancy that may have been issued with respect to the Condominium;

(ix) any other permits issued by governmental bodies applicable to the Condominium that are then in force or which were issued within 1 year prior to the end of the Declarant Control Period;

(x) written warranties of the Contractor, suppliers, and manufacturers of and for the Condominium that are still effective;

(xi) a roster of Owners and known Mortgagees and their addresses and telephone numbers, if known, as shown in the Association's records;

(xii) employment contracts in which the Association is a contracting party, if any; and

(xiii) any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services described in such contract.

6.05 Removal of Directors.

Notwithstanding any provision of this Declaration or any other Association Document to the contrary:

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director elected by a class of Owners may be removed, with or without cause, by a 67% or greater vote of all votes allocated to the class who elected such Director.

6.06 Replacement of Directors.

(a) Vacancies on the Executive Board created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Executive Board created by the removal, resignation or death of a Director elected by a particular class shall be filled by a Director elected by the Owners in such class.

(c) Any Director appointed or elected pursuant to this Section 6.06 shall hold office for the remainder of the unexpired term of the Director that such Director replaced.

6.07 Notice and Opportunity to be Heard.

Whenever this Declaration requires that an action of the Executive Board or the Association be taken after "**Notice and Opportunity to be Heard,**" the following procedure shall be observed: The Executive Board shall give written notice of the proposed action to all Owners whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing, which shall be not less than five (5) days from the date notice is delivered by the Executive Board. At the hearing, the affected Owner shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules or procedure established by the Executive Board to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the Executive Board or the Association. The affected Person shall be notified of the decision in

the same manner in which notice of the hearing was given. If the affected Owner is not satisfied with the decision of the Executive Board or the Association, the matter shall be resolved in accordance with Article XIX.

ARTICLE VII  
ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS

7.01 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Unit (regardless of whether it may be expressly stated in such deed), shall be deemed to have covenanted and agreed to pay to the Association all Assessments and other charges that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

(b) Notwithstanding the definition of the term "Owner":

(i) a Person who acquires a Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date of the foreclosure sale; and

(ii) a Person who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit commencing on the date on which the Owner of the Unit executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any such Assessment or other charges by waiving the use or enjoyment of any Common Element or any portion of the Association Property or by abandoning a Unit against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit.

(e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other charge, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's General Common Expenses shall be allocated among the Units as set forth in this Section 7.02(a). The Share of General Common Expenses allocated to a Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of General Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of all Units})} \times 100$$

(b) Except as otherwise set forth in this Declaration, the Association's Residential Common Expenses shall be allocated among the Residential Units as set forth in this Section 7.02(b). The Share of Residential Common Expenses allocated to a Residential Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of Residential Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of Residential Units})} \times 100$$

(c) Except as otherwise set forth in this Declaration, the Association's Commercial Common Expenses shall be allocated among the Commercial Units as set forth in this Section 7.02(c). The Share of Commercial Common Expenses allocated to a Commercial Unit shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Share of Commercial Common Expenses} = \frac{(\text{Area of the Unit})}{(\text{Total Area of Commercial Units})} \times 100$$

(d) The Share of General Common Expenses, the Share of Residential Common Expenses, and the Share of Commercial Common Expenses allocated to the Initial Units is set forth on Exhibit "C" attached hereto.

(e) If any Units are added to or withdrawn from the Condominium, or if the Area of any one or more of the Units is increased or decreased, the Share of General Common Expenses for all Units within the Condominium, the Share of Residential Common Expenses for all Residential Units and the Share of Commercial Common Expenses for all Commercial Units, as applicable, after such addition, withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Sections 7.02(a), (b) and (c) above.

(f) Until the Association levies an Assessment, Declarant shall pay all Common Expenses.

### 7.03 Budgets.

(a) Prior to the first levy of an Assessment, and thereafter on or before October 1 of each calendar year, the Executive Board shall adopt a proposed annual budget for the Association for the following calendar year that sets forth:

(i) the Executive Board's estimate of Common Expenses for the next calendar year;

(ii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through General Assessments; and

(iii) the amount of funds for such Common Expenses that the Executive Board proposes to raise through Limited Assessments.

(b) Within 90 days after adopting a proposed annual budget, the Executive Board shall mail, by first-class mail, or otherwise deliver, including posting on the Association's website, if any, a summary of the proposed annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed annual budget to the Owners. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The proposed annual

budget shall not require approval from the Owners and will be deemed approved by the Owners, unless at that meeting at least 67% of all votes within the Association, whether or not a quorum is present, vote against the budget (as it applies to General Common Expenses). The Association shall likewise prepare budgets for the Commercial Common Expenses and the Residential Common Expenses in accordance with the foregoing. The budget for Commercial Common Expenses shall be deemed approved, unless at the meeting, at least 67% of all votes allocated to the Commercial Units vote against such budget. The budget for Residential Common Expenses shall be deemed approved, unless at the meeting, at least 67% of all votes allocated to the Residential Units vote against such budget.

(c) If the Owners fail to ratify any annual budget for any fiscal year prior to the beginning of that fiscal year, the Owners shall continue to pay periodic installments of Assessments to the Association equal to the rate payable during the prior fiscal year multiplied by the CPI Adjustment Factor until such time as the applicable Owners ratify a new annual budget for the then current fiscal year. Once the Owners ratify a new annual budget, the Association shall levy against each Unit the Assessments for the then current fiscal year and each Owner's periodic installments shall be adjusted as necessary to pay the new Assessment in equal periodic installments over the remainder of such fiscal year, giving the Owners credit, in such manner as the Executive Board deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such fiscal year.

(d) If the Executive Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.03(b) above, the Executive Board may adopt a proposed amendment to the annual budget, and within 90 days after adopting a proposed amendment to the annual budget, the Executive Board shall deliver a summary of the proposed amendment to the annual budget to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment to the annual budget. Only those Owners whose Assessments shall be affected by such amendment shall be entitled to object to the amendment. The date of such meeting shall occur within a reasonable time after the delivery of the summary of the proposed amendment to the annual budget to the Owners. The proposed amendment to the annual budget shall not require approval from the Owners and will be deemed approved by the Owners, unless at that meeting at least 67% of all votes of Owners entitled to object to the amendment, whether or not a quorum is present, vote against the amendment.

(e) If the Owners ratify an amendment to an annual budget pursuant to Section 7.03(d) above, the amount of the Assessments levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

#### 7.04 General Assessments.

(a) After the Owners ratify an annual budget pursuant to Section 7.03(b) above, the Association shall levy an assessment for General Common Expenses (a "**General Assessment**") on each Unit. The amount of the General Assessment levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of General Common Expenses, by

(ii) the Share of General Common Expenses allocated to that Unit pursuant to Section 7.02 above.

(b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(c) The failure of the Association to levy a General Assessment for any calendar year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of General Common Expenses allocated to such Owner's Unit.

7.05 Limited Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "**Limited Assessments.**"

(b) The Association shall levy a Limited Assessment for Residential Common Expenses against the Residential Units. The amount of the Limited Assessment for Residential Common Expenses levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Residential Common Expenses, by

(ii) the Share of Residential Common Expenses allocated to that Unit pursuant to Section 7.02(b) above.

(c) The Association shall levy a Limited Assessment for Commercial Common Expenses against the Commercial Units. The amount of the Limited Assessment for Commercial Common Expenses levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget ratified by the Owners as the amount of Commercial Common Expenses, by

(ii) the Share of Commercial Common Expenses allocated to that Unit pursuant to Section 7.02(c) above.

(d) Additionally and notwithstanding anything to the contrary contained in Section 7.04 above, if any Common Expenses or other charge incurred by the Association is attributable to (i) the provision of utility or similar services to one or more but fewer than all of the Units or Owners, (ii) transit passes or (iii) the management, operation, construction, maintenance, repair, replacement, alteration or improvement of a Limited Common Element, the Association may levy an Assessment for such Common Expense or other charge against the Unit or Owner to which the Limited Common Element is allocated or to which such Common Expense or other charge is attributable, and if such Common Expense or other charge is attributable to more than one Unit or Owner, then all such affected Owners shall pay their proportionate share thereof based on square footage formulas or in any other equitable proportion as the Association reasonably deems appropriate.

(e) Limited Assessments shall be shown on an annual budget, or an amendment to an annual budget ratified by the Owners pursuant to Section 7.03 above, and shall be paid as and when required by the Association.

(f) The failure of the Association to levy a Limited Assessment shall not be deemed a waiver, modification, or release of an Owner's liability for the Common Expense for which such Limited Assessment is or would be attributable.

7.06 Special Assessments.

(a) The Assessments that the Association may levy and collect pursuant to this Section 7.06 are referred to in this Declaration as “**Special Assessments.**”

(b) If, at any time, due to unexpected circumstances (including, without limitation, any exercise by the Fort Collins, Colorado Downtown Development Authority of its rights under any façade agreement or easement), the Executive Board believes that Common Expenses for a calendar year will exceed the revenues of the Association for that calendar year, then the Executive Board may cause the Association to levy and collect a Special Assessment in an amount equal to the amount of such excess.

(c) If the Association levies a Special Assessment for General Common Expenses, the Owners shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

- (i) the amount of the Special Assessment; by
- (ii) the Share of General Common Expenses allocated to that Unit pursuant to Section 7.02(a) above.

(d) If the Association levies a Special Assessment for Residential Common Expenses, the Owners of the Residential Units shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

- (i) the amount of the Special Assessment; by
- (ii) the Share of Residential Common Expenses allocated to that Unit pursuant to Section 7.02(b) above.

(e) If the Association levies a Special Assessment for Commercial Common Expenses, the Owners of the Commercial Units shall pay to the Association, when and in such installments as the Executive Board deems necessary or appropriate, an amount equal to the product obtained by multiplying:

- (f) the amount of the Special Assessment; by
- (g) the Share of Commercial Common Expenses allocated to that Unit pursuant to Section 7.02(c) above.

(h) The failure of the Association to levy a Special Assessment shall not be deemed a waiver, modification, or release of an Owner’s liability for the Common Expense for which such Special Assessment is or would be attributable.

7.07 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense or other expense incurred by the Association is caused by:

- (i) the negligence or misconduct of an Owner or an Owner’s Guest; or

(ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest,

the Association may recover such Common Expense or other expense from such Owner by levying an additional assessment against the Owner's Unit. Any such assessment levied by the Association and each fine, penalty, or fee imposed upon an Owner for the violation of any covenant or condition of any Association Document are each referred to herein as a "**Default Assessment.**"

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, ratified by the Owners pursuant to Section 7.03 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided Notice and Opportunity to be Heard. Subject to the requirements of the Act, Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

#### 7.08 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise.

#### 7.09 Assessment Lien.

(a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Association Document (the "**Assessment Lien**"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) An Assessment Lien is prior to all other liens and encumbrances on a Unit, except:

(i) liens and encumbrances recorded prior to the recordation of this Declaration;

(ii) a First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent, except to the extent the Act provides otherwise; and

(iii) liens for real estate taxes and other governmental assessments or charges against the Unit.

(c) The recording of this Declaration constitutes record notice and perfection of an Assessment Lien on each Unit. No further recordation of any claim of any Assessment Lien is required.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within 6 years after the full amount of the Assessment secured thereby becomes due.

(e) This Section 7.09 does not prohibit:

- (i) actions or suits to recover sums secured by an Assessment Lien; or
- (ii) the Association from taking a deed in lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action. A court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a mortgage on real estate. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

7.10 Waiver of Homestead Exemptions.

By acceptance of the deed or other instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes.

7.11 Estoppel Certificates; Notices to Mortgagees.

(a) The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee within 14 days after the mailing or delivery of written request by such party, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered address, a statement setting forth any or all of the following information as may be requested by such party:

(i) the amount of unpaid Assessments currently levied against the Owner's Unit;

(ii) whether, to the knowledge of the Association, the Owner or the Owner's Unit is in violation of any of the provisions of the Association Documents;

(iii) the amount of the Assessments, including installment payments thereof paid by the Owner during the fiscal year in which the request is received;

(iv) the amount of any delinquent Assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Unit as provided by the Association Documents;

(v) whether all insurance requirements established by this Declaration are being satisfied; and

(vi) a listing of each of the Association Documents, and amendments thereto, with recording information, if applicable.

(vii) If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments that were due as of the date of the request.

(b) If a First Mortgagee delivers to the Association a written request for notice of unpaid Assessments levied against a Unit subject to a First Mortgage held by that First Mortgagee, the Association shall report to the First Mortgagee any unpaid Assessments levied against such Unit that remain unpaid for more than 60 days after the same shall have become due. The First Mortgagee may pay any such unpaid Assessment, together with any and all costs and expenses incurred with respect to the Assessment Lien securing such unpaid Assessment, and upon such payment, such First Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as a lien of the First Mortgage held by such First Mortgagee.

7.12 Reserve Funds

The Association shall have the right to maintain, and collect through Assessments, (i) capital reserve funds for the repair, restoration and replacement of Common Elements and the Association Property and (ii) a general operating reserve fund. The Association shall at all times separately account for any reserve funds for the repair, restoration and replacement of Limited Common Elements appurtenant to the Residential Units and for any reserve funds for the repair, restoration and replacement of Limited Common Elements appurtenant to the Commercial Units such that Residential Unit Owners shall not be required to contribute to the reserve funds for Limited Common Elements appurtenant to the Commercial Units and the Commercial Unit Owners shall not be required to contribute to the reserve funds for the Limited Common Elements appurtenant to the Residential Units. The Association may increase the reserve funds or replace funds withdrawn from the reserve funds with funds collected through Assessments.

7.13 Disputes Regarding Assessments.

The Executive Board shall resolve any dispute or question regarding the imposition, application, determination, administration, payment or collection of any Assessment. Any decision made in that regard shall be final and binding on the Association and the Owners.

ARTICLE VIII  
UTILITIES AND OTHER SERVICES

8.01 Water, Sewer and Gas.

(a) *Residential Units.* The Association shall be responsible for obtaining water, sewer and gas and services for all Residential Units and, as applicable, the Limited Common Elements allocated thereto, which services shall be metered separately from the gas and electric services provided to other portions of the Condominium. The Common Expenses incurred by the Association for the provision of water, sewer and gas services to the Residential Units and the Limited Common Elements allocated thereto shall be allocated among the Residential Units in accordance with each Residential Unit's Share of Residential Common Expenses (without regard to usage) and charged to the Owners of the Residential Units as Limited Assessments.

(b) *Commercial Units.* The Association shall be responsible for water, sewer and gas and services for all Commercial Units and, as applicable, the Limited Common Elements allocated thereto, which services shall be metered separately from the gas and electric services provided to other portions of the Condominium. The Common Expenses incurred by the Association for the provision of water, sewer and gas services to the Commercial Units shall be allocated among the Commercial Units in accordance with the periodic meter readings for each Commercial Unit and charged to the Owners of such Commercial Units as Limited Assessments.

(c) *General Common Elements.* The Association shall determine what, if any, water, sewer or gas services are necessary for the General Common Elements and shall be responsible for obtaining that service. The Common Expenses incurred by the Association for the provision of such services shall be allocated among the Units in accordance with each Unit's Share of General Common Expenses (without regard to usage) and charged to the Owners of the Units as General Assessments.

8.02 Electric.

(a) *Units.* The Association shall be responsible for obtaining electric services for all Units and, as applicable, the Limited Common Elements allocated thereto, which services shall be metered separately from the gas and electric services provided to the General Common Elements. The Common Expenses incurred by the Association for the provision of electric services to the Units shall be allocated among the Units in accordance with the periodic meter readings for each Unit and charged to the Owners of such Units as Limited Assessments.

(b) *General Common Elements.* The Association shall determine what, if any, electric services are necessary for the General Common Elements and shall be responsible for obtaining that service. The Common Expenses incurred by the Association for the provision of such services shall be allocated among the Units in accordance with each Unit's Share of General Common Expenses (without regard to usage) and charged to the Owners of the Units as General Assessments.

8.03 Cable, Internet and Telephone

. Each Owner of a Unit shall be responsible for obtaining cable television, internet and telephone services for its Unit and the Limited Common Elements allocated thereto and shall pay directly to the service company providing such services all costs, expenses, fees, rates and other charges incurred in connection therewith, including connection fees.

8.04 Trash and Recycling

. The Association shall obtain trash and recycling services for the Condominium, and may obtain any other utility service that is not separately metered or is otherwise not separately provided to Units, and shall allocate the costs of such service to the Unit(s) receiving the service based upon reasonable estimates of use, if reasonably feasible, or pro rata based on the number of Units involved, or as otherwise may be reasonable and equitable under the circumstances, and charge such amounts to the Owners of such Units as Limited Assessments.

8.05 Other Utilities

. If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner as it may determine appropriate.

ARTICLE IX  
MAINTENANCE OF COMMON ELEMENTS AND UNITS

9.01 Maintenance of Common Elements.

Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Elements and the Association Property in good order and condition and shall otherwise manage and operate the Common Elements and the Association Property as it deems necessary or appropriate, and in accordance with Applicable Law and all covenants, easements, reservations and restrictions of record, including, without limitation, any façade agreement or easement established pursuant to Section 11.01 or otherwise. In this regard, the Association may:

- (a) subject to Section 10.07(e), construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Element;
- (b) plant and replace trees, shrubs and other vegetation on any Common Element;
- (c) place, maintain and replace signs upon any Common Element;
- (d) adopt and enforce Rules and Regulations regulating the use of Common Elements; and
- (e) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Elements.

Notwithstanding anything to the contrary in this Section 9.01, unless the Association chooses to do so, each Residential Unit shall maintain and repair any balcony or terrace that is a Limited Common Element allocated exclusively to such Residential Unit.

#### 9.02 Maintenance of Condominium Systems.

The Association shall enter into and shall at all times maintain such service and maintenance contracts with qualified Persons for the maintenance and repair of all Improvements owned or controlled by the Association as are reasonably required to maintain such Improvements in good working order and repair. The failure by the Association to maintain such contracts for any such Improvement shall constitute a waiver by the Association and all Owners to assert any design defect or construction defect regarding that Improvement against an Applicable Party pursuant to Article XIX below. Declarant shall have the right to inspect the maintenance log during normal business hours upon reasonable notice to the Association.

#### 9.03 Maintenance of Units.

Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair its Unit (including all fixtures located therein). Additionally, and notwithstanding anything to the contrary in this Declaration, but subject to provisions of Sections 10.08(e) and (g), 10.19, 20.01 and 20.03, the Owner of any Commercial Unit with restaurant or other food and beverage uses shall maintain all kitchen wastewater drain lines, grease interceptor pits, hoods, vents, seals and other similar food and beverage related mechanical equipment utilized in connection therewith in good order and repair, whether such lines, interceptors, hoods, vents, seals and other mechanical equipment are located inside or outside of the Unit, or constitute part of the Unit(s) served or Common Elements. If, in the reasonable judgment of the Association or Declarant, an Owner fails to perform such maintenance obligations, and such failure remains uncured for more than thirty (30) days after the delivery of written notice thereof to such Owner, the Association or Declarant may enter upon such Unit(s), or the Limited Common Elements appurtenant thereto, and perform such maintenance or repair as the Association or Declarant deems necessary or advisable and charge all costs and expenses incurred by the Association in connection therewith to such

Owner. The Owner shall pay the same within thirty (30) days after its receipt of an invoice therefore. Any such charges levied by the Association shall be deemed a Default Assessment.

9.04 Mechanic's Liens and Indemnification.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same or the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagee thereof from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the Owner's request. The Association may enforce such indemnity by collecting from the Owner who suffers or allows such a lien the amount necessary to discharge the lien and all costs of enforcement incidental thereto. If such amount is not promptly paid, the Association shall have all rights and remedies available to it for a failure to pay an Assessment.

9.05 Maintenance Manual

All maintenance and repair work performed by the Association and Owners shall be performed in accordance with and as specified in the Maintenance Manual or, if not addressed in the Maintenance Manual, as is appropriate to maintain the functionality and prolong the life of the improvement in question and include taking all other actions necessary to maintain the improvements in an aesthetically pleasing, functional, good, safe, sanitary, and sound condition. The Association shall regularly inspect the Common Elements, and each Owner shall regularly inspect its Unit, as required or recommended under the Maintenance Manual and otherwise for deterioration, wear and damage requiring maintenance, replacement or repair. The Executive Board shall be authorized, from time to time, to make appropriate revisions to the Maintenance Manual based on the Executive Board's review thereof in order to update the Maintenance Manual to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality items to which the Maintenance Manual pertains. So long as Declarant owns any Unit, Declarant shall also be entitled to make recommendations to the Executive Board for the amendment, revision, or supplementation of the Maintenance Manual. The Executive Board shall also be authorized and empowered to adopt additional maintenance schedules and protocols for routine maintenance tasks, so long as such schedules or protocols are consistent with requirements that may be imposed by the Maintenance Manual.

ARTICLE X  
COVENANTS, CONDITIONS AND RESTRICTIONS

10.01 Applicability of Covenants, Conditions and Restrictions.

Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this Article X shall apply to all Units and Common Elements.

10.02 Association Documents.

Each Owner shall comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Unit.

10.03 Other Documents and Restrictions.

Each Owner shall comply with, and shall ensure that its Guests comply with, and each conveyance of the fee simple interest in and to a Unit or any lessee's interest under a lease of a Unit shall be subject to, the following, as the same may be amended from time to time:

- (a) the terms and conditions of the Association Documents;
- (b) any and all protective covenants, easements, reservations and restrictions of record, including, without limitation, any façade easement or agreement; and
- (c) Applicable Law.

10.04 Notice of Conveyance, Assignment or Encumbrance.

(a) Promptly after a conveyance of a fee simple interest in a Unit or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.

(b) Promptly after an encumbrance of a fee simple interest in a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage or other document creating the encumbrance.

10.05 Use of Residential Units.

(a) Except as otherwise expressly permitted by this Declaration, Residential Units may be used for residential purposes only, including uses that are customarily incident thereto, and shall not be used at any time for business, commercial, or professional purposes. Notwithstanding the foregoing, an Owner may use his or her Residential Unit for a professional or home occupation, as long as Applicable Law permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Condominium is created thereby. Subject to any other restrictions in this Declaration, any Owner may lease its Residential Unit on such terms and conditions as such Owner may determine, including, to the extent permitted by Applicable Law, pursuant to short term rental programs such as "Airbnb", provided that the lessee shall be bound by all terms and conditions of this Declaration, any and all protective covenants, easements, reservations and restrictions of record, including, without limitation, any façade easement or agreement; and Applicable Law.

(b) It shall be permissible for the Declarant to maintain, during the period of its sale and rental of Units in any portion of the Condominium, one or more Residential Units as sales and rental models and offices and for property maintenance purposes. One or more Units in the Condominium may be maintained for the use of the Association in fulfilling its responsibilities.

10.06 Use of Common Elements and Association Property.

(a) All Owners and their Guests may use the General Common Elements, the Limited Common Elements allocated to serve their Units, and the Association Property for the purposes for which the Common Elements and the Association Property are intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Element or any portion of the Association Property in any manner that unreasonably interferes with the rights of other Owners in and to the Common Elements or the Association Property, as the case may be. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Element or any portion of the Association Property. The Owners' rights to use the Common Elements and the Association Property are subordinate and subject to all of the rights and powers of the Association with

respect to the Common Elements and the Association Property, including the Association's right and power to adopt rules regulating the use of the Common Elements and the Association Property.

10.07 Construction and Alterations.

(a) Except as otherwise expressly permitted in this Declaration, an Owner of a Unit may not make any improvement or alteration to a Common Element, or any improvement or alteration to its Unit that affects any Common Element or any other Unit, without the prior written consent of the Executive Board. Any Owner requesting the Executive Board's consent to any such improvement shall submit plans therefor to the Executive Board, which plans shall be prepared by reputable architects (which may be the architect of the Condominium) and/or engineers experienced in the design of structures similar to the Condominium.

(b) Notwithstanding Section 10.07(a) above, an Owner who owns adjoining Units may, with the prior written consent of the Executive Board, remove or alter any intervening partition, even if the partition in whole or in part is a Common Element, if those acts do not impair the structural integrity, electrical systems, or mechanical systems or lessen the support of any portion of the Condominium, except that, prior to the removal of any intervening partition that would have the effect of combining two or more Residential Units into a single Residential Unit, such Owner shall seek and receive all approvals therefor under Applicable Law.

(c) Without limiting the generality of Sections 10.07(a) and (b) above, an Owner of a Unit may not, without the prior written consent of the Executive Board, install or erect any improvement, mechanical system or fixture that either:

- (i) protrudes beyond the boundaries of the Owner's Unit; or
- (ii) is located wholly outside the Owner's Unit (even if located within a Limited Common Element that is allocated solely to the Owner's Unit).

(d) Without limiting the generality of Sections 10.07(a) through (c) above, Owners of Units may improve or alter improvements within the interior boundaries of the Owners' Unit provided that such improvements and alterations do not impair the structural or acoustical integrity of any Unit, any Common Element, or any utilities or other systems servicing any portion of the Common Elements or any other Unit. Plans and specifications showing the nature, kind, shape, color, size, materials and location of any proposed improvement or alterations, which plans shall be prepared by reputable architects (which may be the architect of the Condominium) and/or engineers experienced in the design of structures similar to the Condominium, shall be submitted to the Executive Board to enable the Executive Board to confirm compliance with the requirements of this Section 10.07(d).

(e) To the extent any Owner alterations contemplated by this Section 10.07, or any action by the Association pursuant to Section 9.01 above, would result in the alteration to, or change in the appearance of, the exterior façades of the Condominium, the Association shall cause such alteration or action to be reviewed by a reputable architecture firm (which shall be the architect of the Condominium unless otherwise determined by the Executive Board) in order to confirm appropriateness and conformance with the overall design of the Condominium. The cost of any such review shall (i) if undertaken pursuant to an Owner's alteration request, be paid by such Owner and (ii) if undertaken in connection with an Association action pursuant to Section 9.01 above, be a Common Expense.

(f) Notwithstanding anything to the contrary set forth in this Section 10.07, no consents or approvals of the Association, the Executive Board, or any other Person shall be required in

connection with the exercise by the Declarant, or any Successor Declarant, of any rights reserved in this Declaration relating to the annexation of all or any portions of the Additional Property to the Condominium, or the alteration or modification of equipment and facilities located within the Additional Property in connection with such construction.

10.08 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Property that creates a nuisance. Without limiting the generality of the foregoing:

(i) no lights shall be emitted that are unreasonably bright or cause unreasonable glare;

(ii) no sound shall be emitted that is unreasonably loud or annoying; and

(iii) no odor shall be emitted that is unreasonably offensive.

(b) No Person shall conduct any activity on the Property that is or might be hazardous to any Person or property. Without limiting the generality of the foregoing:

(i) no open fires shall be allowed to exist, unless contained in a customary barbeque grill and unless in compliance with Applicable Law; and

(ii) no firearms may be discharged; and

(iii) no disposal of hazardous materials may be made within the Property.

(c) No unsightliness shall be permitted at the Property. Without limiting the generality of the foregoing:

(i) all exterior mechanical equipment lines, wires, pipes and other facilities shall either be buried or enclosed;

(ii) no bicycles or other recreational equipment shall be stored on balconies, but must instead be stored in the Residential Common Element storage area located in the basement level of the Condominium, or within a Unit;

(iii) all garbage shall be disposed of in accordance with the terms and conditions of Section 10.14 below.

(d) Normal construction activities shall not be considered to violate the terms and conditions of this Section 10.08.

(e) By accepting a deed to a Unit, an Owner acknowledges that noises, lights and odors common to commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time. Subject to the restrictions set forth in Section 10.19(e)(i)(A) and (B), such activities shall not be considered a nuisance under this Section 10.08.

(f) The Association shall have the power to grant variances from the terms and conditions of this Section 10.08 from time to time as it deems necessary.

(g) Notwithstanding anything to the contrary contained in this Declaration, but subject to all applicable laws, ordinances, rules and regulations imposed by the City and to the restrictions set forth in Section 10.19(e)(i)(A) and (B), restaurants, retail stores and other facilities located in the Commercial Units may be open for business with the general public during the hours of 5:00 a.m. through 2:00 a.m. Each Owner (i) acknowledges that the Condominium is a community with both residential and commercial uses, which commercial uses may generate an unpredictable amount of noise, odors and other nuisances, and (ii) waives any and all rights or causes of action against Declarant, the Association and, subject to compliance by the Owners of Commercial Units with the restrictions set forth in Section 10.19(e)(i)(A) and (B), the Owners of Commercial Units caused by, arising out of or related to any such uses, noises, odors or other nuisances.

#### 10.09 Signs.

(a) Subject to Section 10.09(c) below, no signs or banners whatsoever shall be erected or maintained on the Property, except signs or banners required by legal proceedings. In addition, any such required or permitted signs or banners shall comply with all applicable laws, ordinances, rules and regulations imposed by the City.

(b) Without limiting the generality of Section 10.09(a) above, no "For Sale" or "For Rent" signs shall be displayed on the exterior (including windows) of a Unit.

(c) Notwithstanding anything to the contrary set forth in this Section 10.09, but subject to the limitations of this Section 10.09(c), the Association shall not prohibit any occupant of a Unit from displaying an American flag, Colorado state flag, military service flag or political signage in a window of its Unit or on the balcony or patio adjacent to such Unit. The display of an American flag, military flag or political signage shall be restricted as follows:

(i) An Owner or Owner's Guest may place an American flag or Colorado state flag on the balcony or patio adjacent to its Unit without the prior consent of the Association, but no Person shall display any American flag or Colorado state flag from any window, balcony or patio that is larger than 48" in length without the prior consent of the Association.

(ii) An Owner or Owner's Guest may place a military service flag bearing a star denoting the service of such Owner or Guest, or members of such Owner's or Guest's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict on the inside of any window or door of the Owner's Unit. No such flag shall exceed 9" by 16" in size.

(iii) Political signs promoting or opposing a candidate for office or a ballot issue may be displayed in the window of a Unit not earlier than 45 days prior to the applicable election day and shall be removed within 7 days after such election. Not more than 1 sign per candidate, office or issue may be so displayed in a window and, subject to applicable law, no such sign shall exceed 36" by 48" in size.

#### 10.10 Compliance with Laws.

Nothing shall be done or kept at the Property in violation of any applicable law.

#### 10.11 Compliance with Insurance.

Except as may be approved in writing by the Association, nothing shall be done or kept at the Property that may result in the cancellation of any insurance maintained by the Association or may result in an increase in the rates of any such insurance.

10.12 Subdivision, Rezoning and Timesharing.

(a) No Residential Unit may be subdivided, unless the subdivision has been approved by 100% of the votes allocated to all Units and the proposed subdivision otherwise complies with this Declaration and all other Association Documents.

(b) Except as permitted in Section 10.19 below, no application for rezoning any portion of the Property, and no applications for variances or use permits, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning has been approved by 100% of the votes allocated to all Units and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) The covenants, conditions and restrictions set forth in Sections 10.12(a) through (c) above shall not apply to Declarant's development of the Property, to Declarant's exercise of any Special Declarant Right or any other right reserved to Declarant in this Declaration, or to Declarant's use or ownership of any Unit.

10.13 Vehicles and Parking.

(a) Each Residential Unit is allocated, as a Limited Common Element appurtenant to such Residential Unit, a Parking Space. A Parking Space that is allocated to a Residential Unit as a Limited Common Element may not be transferred or conveyed apart from the transfer of the subject Residential Unit; provided, that an Owner of a Residential Unit shall have the right, subject to approval of the Executive Board, to license such Owner's right to use a Parking Space allocated to such Owner's Residential Unit on the conditions that (i) the licensee is another Owner or the Association and (ii) any such license shall automatically terminate upon the transfer or conveyance of the Residential Unit to which such Parking Space is allocated as a Limited Common Element. Parking Spaces may only be used in accordance with applicable provisions of this Declaration and reasonable rules (including remote entry, parking cards, stickers, other identification, fines and security measures) established from time to time by the Association. Additional parking for Owners and Guests of the Residential Units, and certain parking for the Owners and Guests of one or more of the Commercial Units, shall be pursuant to a separate instrument (the "**Parking Agreement**") described on Exhibit "D" attached hereto and located on property outside of the Property. All such parking shall be subject to the terms and conditions of the Parking Agreement and to the Rules and Regulations of the Association.

(b) Notwithstanding anything to the contrary stated herein or on the Map, Parking Spaces 13 and 14 shown on the Map are General Common Elements, and may be assigned to any Owner by the Association, provided, however, that unless otherwise determined by the Executive Board, (i) such Parking Spaces shall remain available for use by Owners (or their occupants) who qualify under applicable laws to use a handicap parking space in public facilities, and (ii) may be assigned or reassigned by the Executive Board to a disabled Owner as soon as reasonably feasible upon demonstration that the Owner so qualifies. Upon such time that a disabled Owner (or his or her occupant if such occupant is leasing such Owner's Unit pursuant to the terms hereof) who has been assigned one or more of such Parking Spaces no longer qualifies as a disabled Owner, the Association may reassign that handicap Parking Space. In the event that the Association assigns the use of either of such Parking Spaces to the Owner of a Commercial Unit, such Owner shall have any easement over, across and through the drive aisles and other portions of the parking garage for ingress and egress from such Parking Space(s) and all

other portions of the Condominium necessary for ingress and egress to and from such Parking Space(s) to such Owner's Commercial Unit.

(c) Vehicles permitted under this subparagraph may be parked only in designated, lined parking spaces. Disabled and stored vehicles are prohibited from being parked at the Condominium. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains at the Condominium without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

(d) Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification or the equivalent by the Colorado Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes (other than vehicles with commercial writings on their exteriors that are not otherwise prohibited, and sheriffs, marshals, police officers' or other emergency vehicles marked as such), are also prohibited from being parked in the Condominium, except in areas, if any, that may be designated by the Executive Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the General Common Elements during normal business hours for the purpose of serving any Unit or the General Common Elements; provided, however, that no such vehicle shall remain on the General Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

(e) If any vehicle is parked on any portion of the Condominium in violation of this Section or in violation of the other Association Documents, the Executive Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Executive Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle.

(f) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Parking Space, is parked within the Condominium in contravention of the restrictions imposed under the Declaration, is obstructing the flow of traffic, is parked in a Parking Space that has been assigned as exclusively serving another Owner, or otherwise creates a hazardous condition, no notice shall be required and the Executive Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

#### 10.14 Deliveries, Trash Removal and Other Services.

(a) Owners of Units and their Guests shall dispose of all trash, garbage and other waste material in the appropriate recycling and trash dumpsters located adjacent to the parking garage. The Association will provide trash and recycling removal from the dumpsters.

(b) Owners shall not, and shall not permit their Guests, to litter on the Property. No burning of trash, garbage or other waste materials will be permitted at the Property. No storage of trash, garbage or other waste materials on the Common Elements, other than the trash dumpsters, will be permitted at the Property.

10.15 Exterior Storage.

No Owner shall store any materials or items on or in any Common Element, other than those Common Elements designed for that purpose, and then only in strict accordance with the terms and conditions of the Association Documents.

10.16 Temporary Structures.

No temporary structure, excavation, basement, trailer, travel trailer, mobile home, camper, motor home, shack or tent or other living unit shall be erected, placed or maintained on the Property except as may be necessary and authorized during construction of Improvements.

10.17 Animals.

Each Owner may keep up to three domesticated animals within its Unit. All permitted animals must be kept within such Owner's Unit and shall not be permitted on other portions of the Property unless leashed and under the control of a responsible individual. Except as expressly permitted by the foregoing sentence, no animals of any kind shall be raised, bred or kept on the Property or within any Unit.

10.18 Grills; Solid-Fuel Burning Devices; Fire Extinguishers.

Subject to any limitations contained in the Rules and Regulations and Applicable Law, natural gas or propane fueled grills are permitted to be used, kept and stored on balconies of the Residential Units. No solid-fuel burning devices, such as charcoal grills and wood burning stoves or fireplaces, shall be used, kept or stored on the Property. Each Residential Unit shall be equipped with one 1A:10B:C fire extinguisher, to be provided and maintained by the Owner of such Residential Unit.

10.19 Commercial Units.

(a) Subject to Section 10.20 below, the Commercial Units may be used and occupied for any commercial purposes permitted under Applicable Law. An Owner of a Commercial Unit may lease all or any portion of such Commercial Unit for such purpose; provided, that any such lease shall be subject to those items described in Section 10.03 above, and shall incorporate the requirements and restrictions contained in any façade easements and agreements set forth on Exhibit "D" attached hereto or established pursuant to Section 11.01 or otherwise.

(b) The Owners of the Commercial Units shall not use, and shall not permit its Guests to use, any Residential Common Element.

(c) Notwithstanding anything to the contrary contained in this Declaration, the Owner of a Commercial Unit may make Improvements or alterations to such Commercial Unit or the Limited Common Elements allocated exclusively to such Commercial Unit without the consent of any Owner or the Association, on the conditions that:

(i) the improvement or alteration does not impair any other Unit or any Limited Common Element allocated to any other Unit;

(ii) the Owner of the Commercial Unit promptly repairs any damage to any General Common Element caused thereby at its cost and expense; and

(iii) the improvement or alteration complies with Applicable Law.

If any such improvement or alteration will impair any other Unit or any Limited Common Element allocated to any other Unit, the Owner of the Commercial Unit may not make the improvement or alteration without the prior written consent of the Owners of the Units, or the Owners of the Units served by the Limited Common Elements, that will be impaired thereby, as the case may be.

(d) Notwithstanding anything to the contrary contained in this Declaration, and in addition to the rights of the Owners of the Commercial Units under paragraph 10.19(c) above, the Owner of a Commercial Unit shall have the right to alter that portion of the Condominium's building facade that serves as the boundary of the Commercial Unit and other Common Elements located immediately adjacent to the Commercial Unit (including the creation, removal and relocation of entrances, exits, windows, window boxes, signage and other architectural features), without the consent of any Owner, on the conditions that (A) the Owner of the Commercial Unit obtains Executive Board approval therefor, (B) the Owner of the Commercial Unit promptly repairs any damage to any General Common Element caused thereby at its expense, and (C) such alteration complies with Applicable Law and the requirements of all recorded easements and licenses, including but not limited to any façade easements and agreements, appurtenant to or included in the Condominium set forth on Exhibit "D" attached hereto and any façade agreement or easement established pursuant to Section 11.01 or otherwise.

(e) Notwithstanding anything to the contrary in this Article X or elsewhere in this Declaration, the Owner of a Commercial Unit may:

(i) perform such activities within the Commercial Unit as are common to or necessary for the conduct of commercial operations, and any lights, sounds and odors which result from such activities shall not violate the terms of this Article X; provided, that, with respect to the exterior Limited Common Elements patio areas appurtenant to the Commercial Units, (A) the playing of amplified music, musical instruments, stereos, radios, television sets, or any other musical device shall only be permitted between the hours of 8:00 a.m. and 10:00 p.m. on Sunday through Thursday and 8:00 a.m. and 11:00 p.m. on Friday and Saturday, and (B) smoking of any kind (which shall be deemed to include the use of smoke-producing or vapor-producing products such as, but not limited to, cigarettes, cigars, pipes, marijuana, hookah, and electronic smoking devices (e.g., vaping), but not include smoke-producing or vapor-producing products involved with customary cooking, grilling or other permitted commercial uses within a Commercial Unit) shall be prohibited at all times.

(ii) notwithstanding any restrictions contained in Section 10.12(b) above, change the commercial use of its Commercial Unit without the consent of the other Owners and take all such related actions (subject to compliance with Applicable Law) required to effectuate such change in use;

(iii) erect and attach signs, banners, window boxes, decorations and other similar items on the exterior of the Condominium or projections from the exterior of the Condominium, on the condition that such signs, banners, window boxes, decorations and other similar items and their locations comply with Applicable Laws; and

(iv) apply for and obtain land use approvals and other licenses and permits that are necessary or appropriate for the conduct of commercial activities in the Commercial Unit without obtaining the approval otherwise required under paragraph 10.12(b) above.

10.20 Prohibited Uses

. Notwithstanding anything to the contrary set forth in this Declaration, none of the Units shall be used as an adult bookstore, adult photo studio, ambulance service, blacksmithing shop, bowling alley, dance hall, discotheque, automobile or other vehicle repair facility, electric substation, fire station, gas regulator station, "head" shop, mortuary, pawn shop, bond or check cashing shop, police station, "sex" shop, tattoo studio, utility pumping station, marijuana cultivation, grow or dispensary operation or facility, or in any other manner that is inconsistent with the customary character of a first class mixed use real property development.

10.21 Declarant's Exemption

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

- (a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights reserved to Declarant under this Declaration or any other Association Document; or
- (b) the conduct by Declarant or its employees or agents of any activity, including the erection or maintenance of temporary structures, trailers, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Condominium.

ARTICLE XI  
EASEMENTS AND RESERVATIONS

11.01 Declarant's Easements Over Common Elements

(a) Declarant hereby reserves for itself and any Successor Declarant(s) a general easement over, across, through and under the Common Elements and the Association Property to:

- (i) discharge Declarant's obligations under this Declaration;
- (ii) exercise any of Declarant's rights under this Declaration; and
- (iii) make improvements (including as necessary for construction staging) at the Property, the Additional Property or any other real estate owned by Declarant.

(b) Declarant hereby reserves for itself and any Successor Declarant(s) the right to:

- (i) establish from time to time utility, drainage, access, and other easements, permits or licenses over, across, through and under the Common Elements and the Association Property for Declarant and other Persons; and
- (ii) create other reservations, exceptions and exclusions for the benefit of Declarant and other Persons,

on the conditions that, (A) the parties benefited by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Property or the Association Property by the

Owners to the extent practicable; and (B) if the parties benefited by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Property or the Association Property pursuant to the same, the benefited parties shall promptly repair any damage caused to the Property thereby at their sole cost and expense.

(c) Declarant hereby reserves for itself and any Successor Declarant(s) the right, in connection with the façade agreement relating thereto set forth on Exhibit "D" attached hereto, to enter into and grant to third parties, including, without limitation, The Fort Collins, Colorado Downtown Development Authority, a body corporate and politic, and the City, a façade easement and a public access easement over portions of the Common Elements generally described in the façade agreement or as otherwise determined by Declarant.

(d) In addition, until such time as Declarant adds any portion of the Additional Property to the Condominium, Declarant shall have whatever easements are reasonably necessary or desirable across the Property for access to and utility services for the Additional Property.

#### 11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby reserves for itself and creates for the benefit of any utility or service company designated by Declarant a general easement over, across, through and under the Property for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including water, sewer, storm water drains and pipes, gas, snow melt, telephone, electricity, fiber optic, high-speed internet access, data transmission, cable communication and any similar public or quasi-public improvements or facilities that service the Property or any portion thereof as well as any such lines and systems that service real property owned by Declarant or other buildings or real property designated by Declarant. Declarant may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.02 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, Declarant, or any utility or service company designated by Declarant may install and maintain facilities and equipment on the Property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units, the Common Elements or any real property owned by Declarant, or any other party designated by Declarant. Notwithstanding anything to the contrary contained in this Section 11.02, no sewers, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Property, except in accordance with the terms and conditions of Section 10.07 above. Declarant, or any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant and other utility and service companies.

(c) If Declarant, or any utility or service company furnishing utilities or services to the Property or any portion thereof or any real property owned by Declarant, or any other party designated by Declarant as permitted under Section 11.02(a) above requests a specific easement by separate recordable document, Declarant or the Association, as applicable, shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Property.

#### 11.03 Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Unit and each Common Element to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Unit in connection with the easements described in Section 11.03(a) above without reasonable prior notice to the Owner thereof, except in cases of emergency.

#### 11.04 Easements for Commercial Unit Owners.

Declarant hereby reserves for itself and grants to, and creates for the benefit of, the Owners of Commercial Units, a nonexclusive, perpetual easement across, through, over and under any and all General Common Elements and portions of the Limited Common Elements labeled on the Map as LCE-C, without the consent of any Owner or the Association, for the purposes of installation, operation, maintenance, repair and replacement of utility and mechanical service lines, facilities and systems serving the Commercial Units, including, without limitation, any electric, gas, water, sewer, telephone, cable communication, heating, ventilating and air conditioning lines, wires, circuits, cables, conduits, ducts, vents, and any and all improvements related thereto, on the conditions that (a) the Owner of the Commercial Unit utilizing such easement, at its sole cost and expense, shall repair, replace and restore any damage to the Common Elements caused by the exercise of easement rights granted hereby, and (b) the Owner of the Commercial Unit utilizing such easement shall use its best efforts to install, operate, maintain, repair and replace the facilities without disturbing the uses of the Owners, the Association, and other utility and service providers. Declarant further reserves for itself and grants to, and creates for the benefit of, the Owners of Commercial Units, a nonexclusive, perpetual easement across, through, over and under the storage rooms on the basement level of the Condominium labeled on the Map as LCE-R, without the consent of any Owner or the Association, for purposes of ingress and egress to and from the mechanical room on the basement level identified as a General Common Element.

#### 11.05 Emergency Access Easements

Declarant hereby grants to, and creates for the benefit of, all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons, including the Association, a general easement to enter upon the Property in the proper performance of their duties. Declarant hereby reserves for itself and grants to, and creates for the benefit of, the Owners and their Guests, an easement over, across and through the Commercial Unit(s) located on the basement level of the Condominium solely for emergency ingress and egress from those portions of the basement level constituting Common Elements to the exterior stairwell adjacent to such basement level.

#### 11.06 Easements for Encroachments.

To the extent that any Unit or Common Element, as constructed by Declarant, encroaches on any other Unit or Common Element, an easement shall exist for that encroachment, but such easement shall not relieve an Owner of liability in the case of willful misconduct.

#### 11.07 Recorded Easements and Licenses

The Property shall be subject to (i) all easements and licenses as shown on any recorded plat or map affecting the Property, and (ii) any other agreements, easements or licenses of record or of use as of the date of recordation of this Declaration, including, without limitation, agreements relating to the granting

of a façade easement to The Fort Collins, Colorado Downtown Development Authority, a body corporate and politic. The recording data for all presently recorded agreements, easements and licenses appurtenant to or included in the Condominium have been set forth on Exhibit "D" attached hereto. In addition, the Property is subject to all easements created or permitted by this Declaration.

## ARTICLE XII INSURANCE

### 12.01 Insurance Required to be Obtained by the Association.

The Association shall obtain and maintain:

- Act;
- (a) all insurance required to be obtained and maintained by the Association under the Act;
  - (b) any additional insurance that the Executive Board deems necessary; and
  - (c) property insurance insuring against loss or damage to the Common Elements and the Units that (i) provides coverage against any peril included within the classification of "all risks"; and (ii) includes a waiver of subrogation rights by the insurer as to the Owners, Declarant, Contractor and Design Consultants.

### 12.02 Casualty Insurance for Improvements.

(a) The Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the Common Elements, including the structural and mechanical components serving the Units, in accordance with the requirements set forth in Section 12.01 above.

(b) Owners shall be responsible for obtaining and maintaining any casualty insurance that they desire for Improvements located in or forming a part of their Units, and for any fixtures, furnishings and equipment, other than fixtures and equipment that are part of the Common Elements, located within their Units.

### 12.03 Adjustments.

Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds for any such loss shall be paid in accordance with the terms and conditions of the Act.

### 12.04 Owners' Policies

. Each Owner of a Unit is encouraged to obtain additional insurance at such Owner's own cost for such Owner's own benefit covering all personal property within such Owner's Unit and all improvements within the interior finished boundaries of such Owner's Unit. All such policies shall contain waivers of subrogation and provide further that the liability of the carriers issuing insurance to the Association hereunder shall not be affected or diminished by reason of any such insurance carried by any Owner. Each Owner waives and releases all claims against the Association to the extent such claim is covered by applicable insurance policies, regardless of whether damage loss or injury arose from the negligence or breach of any agreement by the Association. Each Owner acknowledges that insurance obtained by the Association does not obviate the need for an Owner to obtain separate insurance for such Owner's

benefit. Each Owner may also obtain general liability insurance at such Owner's own cost for such Owner's own benefit covering operations and activities within such Owner's Unit. Such coverage may also extend to cover any legal liability imposed on an Owner due to such Owner's interest in the Common Elements.

ARTICLE XIII  
CASUALTY

13.01 Casualty to Common Elements.

The Association shall respond to any damage to, or the destruction of, any Common Element in accordance with the terms and conditions of the Act.

13.02 Casualty to a Unit.

To the extent that the Association is not obligated to make any such repairs or replacements, each Owner shall repair or replace any damage to, or the destruction of, the interior of its Unit, as soon as is reasonably practical after such damage or destruction occurs.

13.03 Casualty to Association Property.

The Association shall respond to any damage to, or the destruction of, any Association Property in any manner deemed appropriate by the Executive Board.

ARTICLE XIV  
CONDEMNATION

14.01 Condemnation of All Units.

If the entire Condominium is taken by condemnation or similar proceeding, the Condominium shall terminate as of the date of the taking and any condemnation award payable in connection therewith shall be paid to the Association and then disbursed by the Association in accordance with the terms and conditions of the Act.

14.02 Condemnation of Fewer Than All Units.

If one or more Units, but less than the entire Condominium, is taken by condemnation or similar proceeding,

- (a) any condemnation award payable in connection therewith shall be paid,
  - (b) the Interest in Common Elements appurtenant to those Units shall be reallocated,
- and
- (c) the Shares of Common Expenses allocated to the remaining Units shall be

reallocated,

all in accordance with the terms and conditions of the Act.

14.03 Condemnation of Common Elements and the Association Property.

(a) If any Common Element or all or any portion of the Association Property is taken by condemnation or similar proceeding, any condemnation award payable in connection therewith shall be paid to the Association and used by the Association:

(i) first, to repair any damage to the Common Elements or the Association Property, as applicable, resulting from the condemnation or similar taking; and

(ii) second, for any other Common Expenses.

(b) The Association shall not be required to pay all or any portion of the condemnation award received for the condemnation or similar taking of a Limited Common Element to the Owners of the Units served by such Limited Common Element, unless the Association deems it necessary or appropriate to do so.

ARTICLE XV  
DECLARANT RIGHTS

15.01 Improvements.

Declarant hereby reserves for itself and its successors and assigns the right, but not the obligation, to construct:

(a) any improvements shown on the Map;

(b) telephone lines and systems and fiber optic or other computer network lines and systems, together with related facilities and equipment that Declarant desires to construct, install or maintain on the Property; and

(c) any other buildings, structures or improvements that Declarant desires to construct on the Property or any other real estate owned by Declarant, regardless of whether the same ever become part of the Condominium, including, without limitation, those improvements described in the façade agreement referenced on Exhibit "D" attached hereto.

15.02 Development Rights.

(a) Declarant hereby reserves for itself and any Successor Declarant:

(i) the right to amend this Declaration to add all or any portion of the Additional Property or such other additional real estate to the Condominium as permitted pursuant to Section 38-33.3-222 of the Act;

(ii) the right to amend this Declaration to create up to 6 additional Commercial Units and certain additional Common Elements on all or any portion of the Property, the Additional Property or any other real estate that Declarant may add to the Condominium pursuant to Section 15.02(a)(i) above;

(iii) the right to subdivide any Unit owned by Declarant;

(iv) the right to combine any Units owned by Declarant;

(v) the right to convert any Unit owned by Declarant into Common Elements;

(vi) the right to withdraw from the Condominium any real estate owned by Declarant and located within the Property prior to the conveyance of a Unit located within the Property to a Purchaser;

(vii) the right to withdraw from this Declaration any Additional Property;

(viii) the right to amend this Declaration to conform to or take advantage of any amendments to the Act or other Applicable Law; and

(ix) the right to create easements, permits, licenses and other property rights and reservations as described in Article XI above.

(b) In exercising any development right reserved hereunder, Declarant shall execute and record an amendment to this Declaration in accordance with the requirements of the Act.

#### 15.03 Sales Offices and Models.

Declarant hereby reserves for itself, its successors and assigns the right to maintain sales offices, management offices and models within any Unit owned or leased by Declarant. Declarant also reserves for itself, its successors and assigns the right to construct and maintain signs advertising the Condominium, events and attractions and any other businesses located in the Condominium on any and all Common Elements.

#### 15.04 Exercising Declarant Rights.

Declarant may exercise its Special Declarant Rights and any other rights reserved to Declarant in this Declaration at any time prior to the later to occur of the date on which the Declarant Control Period expires or the date that is 50 years after the date on which this Declaration is recorded in the County Records. Declarant may exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights or any other rights reserved to Declarant in this Declaration. Declarant may exercise any Special Declarant with respect to any and all portions of the Property, including all of the Residential and Commercial Units and the Common Elements. If Declarant exercises any Special Declarant Right or any other right reserved to Declarant in this Declaration with respect to any portion of the Property or the Additional Property, Declarant may, but is not obligated to, exercise that Special Declarant Right or other right reserved to Declarant in this Declaration, as applicable, with respect to any other portion of the Property or the Additional Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XV and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

#### 15.05 Interference with Declarant Rights.

Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right or any other right reserved to Declarant in this Declaration, without Declarant's prior written consent. Any action taken in violation of this Section 15.05 shall be void and have no force or effect.

15.06 Rights Transferable.

Declarant may transfer any Special Declarant Right reserved to it under this Article XV or any other right reserved to Declarant in this Declaration in accordance with the terms and conditions of the Act.

ARTICLE XVI  
MORTGAGEE PROTECTIONS

16.01 Benefit of First Mortgagees.

This Article establishes certain standards and covenants which are for the benefit of First Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

16.02 Notice of Actions.

If requested in writing to do so, the Association shall give prompt written notice of the following to each First Mortgagee making such request:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Common Elements or any Unit in which an interest is held by the First Mortgagee;
- (b) any delinquency in the payment of Assessments which remains uncured for 60 days by an Owner whose Unit is encumbered by a First Mortgage held by such First Mortgagee;
- (c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of First Mortgagees as set forth in this Article; and
- (e) any judgment rendered against the Association.

16.03 Consent Required.

Notwithstanding anything to the contrary contained in this Declaration, the Association may not take any of the following actions without the consent of 67% of the First Mortgagees (based on one vote for each Unit covered by a First Mortgage):

- (a) by act or omission seek to abandon or terminate the Condominium, except to the extent provided by applicable law after condemnation or substantial casualty;
- (b) except as provided herein for condemnation, casualty and the exercise of Special Declarant Rights, change any Unit's Interest in Common Elements, Share of General Common Expenses, Share of Residential Common Expenses, Share of Commercial Common Expenses, or votes in the Association;
- (c) subdivide, partition, or relocate the boundaries of any Unit, except as permitted with respect to Special Declarant Rights;

(d) abandon, subdivide, partition, encumber, sell, or transfer the Common Elements (the granting of easements for public utilities or for other purposes provided for in this Declaration shall not be deemed transfers);

(e) use hazard insurance proceeds for losses to any portion of the Common Elements for other than repair, replacement, or reconstruction of such Common Elements, except as provided by the Act; or

(f) merge the Condominium with any other common interest community, except as permitted with respect to Special Declarant Rights.

16.04 Notice of Objection.

Unless a First Mortgagee provides the Association with written notice of its objection, if any, to any proposed amendment or action requiring the approval of First Mortgagees within 60 days following the receipt of notice of such proposed amendment or action, the First Mortgagee will be deemed conclusively to have consented to or approved the proposed amendment or action.

16.05 First Mortgagee's Rights.

(a) 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 Elements or improvements thereon, and may pay overdue premiums on hazard insurance policies, for the Common Elements. First Mortgagees making such payment shall be owed immediate reimbursement from the Association.

(b) A First Mortgagee shall be entitled to cure any delinquency of the Owner of a Unit encumbered by its 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.

16.06 Limitations on First Mortgagee's Rights.

No requirement for approval or consent by a First Mortgagee provided in this Article shall operate to:

(a) deny or delegate control over the general administrative affairs of the Association by the Owners or the Executive Board;

(b) prevent the Association or the Executive Board from commencing, intervening or settling any legal proceeding; or

(c) prevent any insurance trustee or the Association from receiving and distributing any insurance proceeds in accordance with the requirements of the Article XII above.

16.07 Declarant Rights.

No provision or requirement of this Article XVI shall restrict or limit any Special Declarant Rights or any other rights reserved to Declarant in this Declaration.

ARTICLE XVII  
ENFORCEMENT AND REMEDIES

17.01 Enforcement.

(a) Enforcement of Declaration as between Owners and Association.

(i) Enforcement of the terms and conditions of this Declaration with respect to the Association or the Common Elements shall be enforceable by any Owner by a proceeding for injunctive relief.

(ii) Enforcement of the terms and conditions of this Declaration with respect to an Owner or a Unit shall be enforceable by Declarant or by the Association by:

(A) a proceeding for injunctive relief;

(B) a suit or action to recover damages; and/or

(C) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Elements and from participation in any Association affairs.

(iii) By acceptance of a deed to a Unit, an Owner agrees to be bound by the terms and conditions of this Declaration. In addition to all other remedies provided to the Association in this Declaration, if an Owner fails to perform or observe any covenant or condition to be performed or observed by such Owner under this Declaration or any other Association Document, the Association shall have the following special rights and remedies:

(A) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within 30 days after the Owner receives a written notice of a Default Assessment therefor from the Association.

(B) The Association may, after Notice and Opportunity to be Heard, fine the Owner, as a Default Assessment, an amount not to exceed \$100 per day that such violation remains uncured for each violation. The Owner shall pay any such fine to the Association within 30 days after the Owner receives written notice of a Default Assessment therefor from the Association.

(C) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(D) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(iv) Notwithstanding anything to the contrary contained in this Declaration, any sums paid to the Association by an Owner shall be applied in the following order: first, to costs incurred by the Association to collect outstanding unpaid sums due to the Association, second, to satisfy any outstanding Default Assessments or other fines, third, to satisfy any outstanding interest accrued on

any assessed but unpaid Assessments, and fourth, to satisfy any assessed but unpaid Assessments other than Default Assessments.

(v) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(vi) The Association may adopt such Rules and Regulations as the Executive Board deems necessary or appropriate to administer and enforce the terms and conditions of this Declaration and the other Association Documents.

(b) Enforcement by Declarant. Enforcement of the terms and conditions of this Declaration that are intended to benefit Declarant shall be enforceable by Declarant, as applicable, by:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; and/or
- (iii) any other remedy at law or in equity available to Declarant.

All rights and remedies of Declarant shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

(iv) In addition to the foregoing rights and remedies, if an Owner or the Association fails to perform or observe any covenant or condition on such Owner's or the Association's part to be performed or observed under this Declaration or any other Association Document, which covenant or condition is intended to benefit the Declarant, Declarant may, but is not obligated to, cure such failure to comply at the Owner's or the Association's sole cost and expense. If Declarant cures any such failure to comply, the Owner or the Association, as applicable, shall pay to Declarant the amount of all costs incurred by Declarant in connection therewith within 30 days after the Owner receives written notice of such amount from Declarant.

#### 17.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the nonprevailing party all of its costs and expenses in connection therewith, including the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

#### 17.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of 18% per annum, or such other rate as the Executive Board may establish from time to time, from the due date of such unpaid amount until the date paid.

#### 17.04 Nonwaiver.

Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVIII  
TERM AND AMENDMENTS

18.01 Term

. The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Property until the Declaration is terminated pursuant to Section 18.02 below.

18.02 Termination.

(a) Subject to the rights of First Mortgagees under Article XVI above, the Owners may terminate the Condominium and this Declaration, by the affirmative vote of 80% of the votes allocated to all Units. If the necessary votes are obtained, the agreement of the Owners to terminate the Condominium and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the terms and conditions of the Act. Upon recordation of the termination agreement in the County Records, the Condominium shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

(b) Notwithstanding the foregoing, the Owners may not terminate the Condominium during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(c) Further notwithstanding the foregoing:

(i) a termination of the Condominium and this Declaration shall not release the Property from the easements, covenants, conditions and restrictions set forth in Article X above and such easements, covenants, conditions and restrictions shall survive the termination of this Declaration unless the Declarant consents to the release thereof in writing;

(ii) a termination of the Condominium and this Declaration shall not release the Property from the burdens created by Article XV above and the Special Declarant Rights and any other rights reserved to Declarant in this Declaration shall survive the termination of this Declaration unless the Declarant consents to the release thereof in writing; and

(iii) a termination of the Condominium and this Declaration shall not affect the rights of Owners of Commercial Units created by Section 10.19 above, which rights shall survive the termination of this Declaration unless the Owners of Commercial Units consent to release such rights by an affirmative vote of at least 67% of the votes allocated to all Commercial Units.

18.03 Amendments.

(a) Except for provisions of this Declaration regarding the rights and obligations of Declarant, Contractors or Design Consultants, which may not be amended without Declarant's, the Contractors', or the Design Consultants' prior written consent, as applicable, and provisions of this Declaration regarding the rights of the Owner of the Commercial Units, which may not be amended without the affirmative vote of at least 67% of the votes allocated to all Commercial Units, and subject to the rights of First Mortgagees under Article XVI above, Owners may amend any provision of this Declaration at any time by an affirmative vote of at least 67% of the votes allocated to all Units, unless by its terms such provision requires a greater vote of the Owners for its amendment. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be recorded in

the County Records in accordance with the terms and conditions of the Act. Notwithstanding the foregoing, the Owners may not amend this Declaration during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

(b) Notwithstanding the terms and conditions of Section 18.03(a) above, Declarant may, without the approval of the Owners, amend:

(i) this Declaration and the Map to correct clerical, typographical, technical or other errors;

(ii) this Declaration to comply with any Applicable Law or the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association; and

(iii) this Declaration or the Map as otherwise provided by this Declaration or the Act.

#### ARTICLE XIX DISPUTE RESOLUTION

##### 19.01 Dispute Resolution.

Other than with respect to claims relating to enforcement of this Declaration under Article XVII above, each Party (as defined below) agrees to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Party covenants and agrees to submit all Claims (as defined below) to the procedures set forth in this Article and not to a court of law. By acceptance of a deed for a Unit, each Owner agrees to abide by the terms of this Article. No Claim (as defined below) may be initiated after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation or statute of repose.

##### 19.02 Definitions Applicable to this Article

For purposes of this Article only, the following terms have the meanings set forth in this Section:

(a) "AAA" means the American Arbitration Association or any other Person subsequently agreed to by the Claimant and Respondent in writing for the purpose of performing the functions of the American Arbitration Association under this Declaration.

(b) "Claimant" means any Party having or asserting a Claim.

(c) "Claim" means, except as excluded or exempted by the terms of this Article, any claim, grievance or dispute between one Party and another, regardless of how the same may have arisen or on what it might be based, including without limitation those arising out of or related to (i) the interpretation, application or enforcement of any of the Association Documents or the rights, obligations and duties of any Party under any of the Association Documents; (ii) the design or construction of Improvements; (iii) any statements, representations, promises, warranties, or other communications made by or on behalf of any Party. A Claim may be brought by lawsuit, counterclaim, cross-claim, mediation, arbitration, or in any other manner.

(d) **“Party”** means each of the following: Declarant, its officers, directors, partners, members, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any Contractor or Design Consultant, its officers, directors, partners, members, employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article.

(e) **“Respondent”** means any Party against whom a Claimant asserts a Claim.

(f) **“Termination of Mediation”** means a period of time expiring forty-five (45) days after a mediator has been agreed upon by the parties (however, a mediator shall be selected no later than thirty (30) days after the Claimant has given notice to the Respondent of the Claim and if the Claimant and Respondent are unable to agree on a mediator, one shall be chosen by the AAA) and the matter has been submitted to mediation (or within such other time as determined by the mediator or agreed to by the Claimant and Respondent), and upon the expiration of which the Claimant and Respondent have not settled the Claim.

#### 19.03 Approval Required for Association Actions

. The approval of sixty-seven percent (67%) of the votes attributable to the Units cast by Owners voting in person or by proxy at a meeting duly called for this purpose at which a quorum is, must be obtained before the Association shall have the power to institute action on any Claim or incur legal fees or expert costs in excess of \$5,000.00 related to such Claim pursuant to this Article, or to make any counterclaim or cross-claim in any lawsuit with respect to any Claim brought against the Association. In addition to the foregoing, the Association shall seek to obtain the approval of sixty-seven percent (67%) of Mortgagees by written vote or proxy by written notice.

#### 19.04 Notice and Quorum for Association Actions

Written notice of any meeting of Members which includes a vote pursuant to Section 19.03 of this Declaration shall be sent to all Owners not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. Such written notice, or if the vote is to be by written ballot then such written ballot, shall include

(a) the following information:

(i) A statement regarding the nature of the Claim. Such statement shall include the name(s) of the proposed Claimant(s) and Respondent(s), the basis and reason for the Claim, and any other information necessary to adequately explain the nature of the proposed Claim; and

(ii) A good-faith estimate of the costs and fees, including court costs and other costs, the fees of consultants, expert witnesses and attorneys, reasonably anticipated to be incurred by or for the Association in prosecuting the Claim, with such estimate prepared by the primary attorney the Executive Board proposes to have prosecute the Claim on its behalf; and

(iii) A good-faith estimate of the manner in which any monies reasonably anticipated to be recovered from the Claim will be distributed or paid to consultants, expert witnesses, the Association, its attorney(s) and any others, prepared by the primary attorney the Executive Board proposes to have prosecute the Claim on its behalf; and

(iv) A good faith estimate of the projected time frame for resolution of the Claim; and

(v) All terms and provisions of the agreement between the Association and the attorney(s) the Executive Board proposes to have prosecute the Claim;

(vi) and, the following disclosures in capital letters and bold typeface:

**(A) THE ALLEGED CONSTRUCTION DEFECTS MAY RESULT IN INCREASED COSTS TO THE ASSOCIATION IN MAINTENANCE OR REPAIR AND/OR CAUSE AN INCREASE IN ASSESSMENTS OR SPECIAL ASSESSMENTS TO COVER THE COST OF REPAIRS.**

**(B) UNTIL THE ALLEGED DEFECTS ARE REPAIRED, SELLERS OF UNITS WITHIN THE COMMON INTEREST COMMUNITY MAY OWE UNIT BUYERS A DUTY TO DISCLOSE KNOWN DEFECTS.**

**(C) THE EXECUTIVE BOARD INTENDS TO ENTER INTO A FEE ARRANGEMENT WITH THE ATTORNEYS REPRESENTING THE ASSOCIATION, UNDER WHICH (OF THE AMOUNT THE ASSOCIATION RECOVERS FROM THE DEFENDANT(S), THE ATTORNEYS WILL BE PAID A CONTINGENCY FEE EQUAL TO \_\_\_\_\_ PERCENT OF THE (NET) (GROSS) RECOVERY.) (THE ASSOCIATION'S ATTORNEYS WILL BE COMPENSATED AS FOLLOWS: \_\_\_\_\_).**

**(D) IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION MAY INCUR UP TO \$\_\_\_\_\_ FOR LEGAL EXPENSES, INCLUDING EXPERT WITNESSES, DEPOSITIONS, AND FILING FEES. THE AMOUNT WILL NOT BE EXCEEDED WITHOUT THE EXECUTIVE BOARD'S FURTHER WRITTEN AUTHORITY. IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE TO PAY THESE LEGAL EXPENSES.**

**(E) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE TO PAY ITS ATTORNEYS' FEES.**

**(F) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, A COURT OR ARBITRATOR SOMETIMES AWARDS COSTS AND ATTORNEYS' FEES TO THE OPPOSING PARTY. SHOULD THAT HAPPEN IN THIS CASE, THE ASSOCIATION WILL BE RESPONSIBLE TO PAY SUCH AWARD.**

**(G) THERE IS NO GUARANTEE THAT THE ASSOCIATION WILL RECOVER ENOUGH FUNDS TO REPAIR THE CLAIMED CONSTRUCTION DEFECT(S). IF THE CLAIMED DEFECTS ARE NOT REPAIRED, ADDITIONAL DAMAGE TO PROPERTY AND A REDUCTION IN THE USEFUL LIFE OF THE COMMON ELEMENTS MAY OCCUR.**

**(H) UNTIL THE CLAIMED CONSTRUCTION DEFECTS ARE REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT CLAIM IS CONCLUDED, THE MARKET VALUE OF THE UNITS IN THE ASSOCIATION MAY BE ADVERSELY AFFECTED.**

**(I) UNTIL THE CLAIMED CONSTRUCTION DEFECT(S) ARE REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT(S) CLAIM IS CONCLUDED, OWNERS IN THE ASSOCIATION MAY HAVE DIFFICULTY REFINANCING AND PROSPECTIVE BUYERS MAY HAVE DIFFICULTY OBTAINING FINANCING.**

The presence of Members or of proxies, or if by ballot then receipt by the Association of written ballots, entitled to cast sixty-seven percent (67%) of all of the Association votes, shall constitute a quorum at any meeting at which the Members vote on approval of any Claim the Association wishes to bring.

19.05 Required Form of Proxy or Ballot

. Each written proxy, and each ballot, which purports to vote on, or authorize a vote on, approval of the Association bringing a Claim shall contain the following statement with respect to any vote approving the Association to bring a Claim:

With full knowledge and understanding that my annual Assessments may be increased by the costs and fees associated with the proposed Claim, I/we APPROVE the authority of the Association to bring such Claim.

19.06 Exclusions from "Claim"

. Unless specifically exempted by this Article, all Claims between any of the Parties shall be subject to the provisions of this Article. Notwithstanding the foregoing, unless all Parties thereto otherwise agree in writing, "Claim" does not include any of the following, and the same shall not be subject to the provisions of this Article:

(a) Any action to enforce this Declaration pursuant to Article XVII above; and

(b) Any action between or among Owners, which does not include Declarant, a Contractor, a Design Consultant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents.

19.07 Right to Inspect

Prior to any Party commencing any proceeding against another Party, including but not limited to an alleged defect of any Improvement, the Respondent shall have the right to be heard by the Claimant and, if any Claimant is the Association, by the Members, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or to otherwise correct the alleged defect; provided, however, any correction to, or redesign of, an Improvement shall be made upon terms and conditions reasonably acceptable to all affected Parties. In the exercise of the inspection rights contained herein, the inspecting Party shall:

(a) Be careful to avoid unreasonable intrusion upon, or harm, damage or costs to the affected Party including using its best efforts to avoid causing any damage to, or interference with, any Improvements to the subject property;

(b) Minimize any disruption or inconvenience to any Person who occupies the subject property;

(c) Remove daily all debris caused by the inspection and located on the subject property; and

(d) In a reasonable and timely manner, at the sole cost and expense of the inspecting Party, promptly remove all equipment and materials from the subject property and repair and replace all damage, and restore the subject property to the condition of the subject property as of the date of the inspection unless the subject property is to be immediately repaired.

The inspecting Party shall not permit any lien, claim or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the subject property. The inspecting Party shall indemnify, defend, and hold harmless the affected Owners and their tenants, guests, employees and agents, against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorneys' fees, resulting from any breach of this Section by the inspecting Party.

19.08 Mandatory Procedures.

(a) Good Faith Negotiations. The Parties shall make every reasonable effort to meet in person and confer for the purposes of resolving the Claim by good faith negotiation. Any Party may be represented by attorneys and independent consultants to assist such Party in negotiations and to attend meetings.

(b) Notice. Prior to proceeding with any claim against a Respondent, each Claimant shall give a notice to each Respondent, which notice shall state plainly and concisely:

(i) the nature of the Claim, including all Persons involved and Respondent's role in the Claim;

(ii) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(iii) the specific relief and/or proposed remedy sought.

(c) Mediation.

(i) If the Parties do not resolve the Claim through negotiations within thirty days after submission of the Claim to the Respondent(s), Claimant shall have an additional thirty (30) days to submit the Claim to mediation under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Mediation Procedures, as appropriate.

(ii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iii) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If a Termination of Mediation occurs, the mediator shall issue a notice of Termination of Mediation. The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(iv) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator.

(v) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 19.08(c) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 19.08 of this Declaration. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(d) Binding Arbitration.

(i) Subject to Section 19.08(c)(ii) above, upon Termination of Mediation, if Claimant desires to pursue the Claim, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate by one arbitrator. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. Unless otherwise mutually agreed to by the parties to the Claim, there shall be one arbitrator who, to the extent feasible, shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved who shall be selected as follows: each party shall select one arbitrator and such selected arbitrators shall select a single third arbitrator who shall decide the Claim.

(ii) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the arbitrator or the court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred in trial and on appeal, to the non-contesting Party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

(iii) The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of all Parties to the Claim.

19.09 Liability for Failure of Association to Maintain an Action

No director or officer of the Association shall be liable to any Person for failure to institute or maintain or bring to conclusion a cause of action, mediation or arbitration for a Claim if the following criteria are satisfied: (a) the director or officer was acting within the scope of his or her duties; (b) the director or officer was not acting in bad faith; and (c) the Act or omission was not willful, wanton or grossly negligent.

19.10 Waiver of Consequential and Punitive Damages.

Notwithstanding anything to the contrary set forth in this Declaration, no Respondent shall be liable to any Claimant for any consequential, incidental, punitive, or indirect damages (including, but not limited to, lost profits) arising from, relating to, or otherwise in connection with any Claim even if such Respondent has been advised of the possibility of or could have foreseen such damages. This waiver applies regardless of the form of action, whether in contract, tort, or otherwise. By accepting a deed to a Unit, each Owner waives its right and covenants not to assert any constitutional right to trial by jury for

any Claim and covenants and agrees that the waiver of jury trial described above shall be binding upon its successors and assigns and upon all Persons asserting rights or disputes or otherwise acting on such Owner's behalf.

19.11 No Amendment

. Notwithstanding anything to the contrary set forth in this Declaration, the provisions of this Article XIX may never be amended without Declarant's, the Contractors', and the Design Consultants' prior written consent, irrespective of whether Declarant, any Contractor or any Design Consultant owns a Unit or any other portion of the Property.

ARTICLE XX  
DISCLAIMERS

20.01 Urban Environment.

The Condominium is benefited by its urban location, but such location may entail certain unpredictable impacts to the Owners, including, without limitation, traffic congestion, lights, noise and odors generated thereby.

20.02 No View Easement.

Notwithstanding anything to the contrary contained in this Declaration or any other Association Document, or any representation made to the contrary by any real estate agency or any agent, employee or representative of Declarant or the Association, Declarant makes no warranties or representations whatsoever as to, and by taking title to a Unit each Owner is deemed to have agreed and accepted that there is no, easement or other right, express or implied, for the benefit of an Owner or the Association for light, view or air included in or created by this Declaration or as a result of an Owner owning a Unit.

20.03 Sound Transmission and Light Disclaimer; Release.

EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OF THEIR UNIT, HEREBY ACKNOWLEDGES AND AGREES THAT SOUND AND IMPACT NOISE TRANSMISSION IN A MULTI-STORY BUILDING SUCH AS THE CONDOMINIUM IS VERY DIFFICULT TO CONTROL, AND THAT NOISES FROM ADJOINING OR NEARBY RESIDENCES, FROM THE COMMON ELEMENTS (INCLUDING HALLWAYS AND TERRACES) AND FROM THE COMMERCIAL UNITS AND THEIR ATTENDANT FACILITIES, THE PARKING GARAGE, AND THE SURROUNDING DEVELOPMENT AND/OR MECHANICAL EQUIPMENT CAN AND WILL BE HEARD IN UNITS. NEITHER THE DECLARANT NOR THE OWNERS OF THE COMMERCIAL UNITS MAKE ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS AND THE OTHER PORTIONS OF THE CONDOMINIUM OR THE LEVEL OF LIGHT THAT MAY IMPACT A UNIT, EACH AS MORE FULLY DISCUSSED BELOW. EACH OWNER HEREBY WAIVES AND EXPRESSLY RELEASES, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW AS OF THE DATE OF THIS DECLARATION, ANY SUCH WARRANTY AND CLAIM FOR LOSS OR DAMAGES RESULTING FROM SOUND OR IMPACT NOISE TRANSMISSION OR LIGHT IMPACTS UPON THE UNITS. In connection therewith, Owners hereby acknowledge that living in a multi-story building and/or living in close proximity to commercial property entails living very close to other persons, businesses and operations with attendant limitations on solitude and privacy. Walls, floors

and ceilings have been designed to meet applicable building codes. However, in a multi-story building, Owners and occupants will hear noise from adjacent units and from common areas, utilities and equipment, including but not limited to, noise from showers, bathtubs, sinks, toilets or other sources of running water and/or plumbing fixtures. Also, Owners may hear noise from such items as commercial activities, indoor and outdoor activities that may be held by the Owners of Commercial Units or other property adjacent to the Condominium, vacuum cleaners, stereos, televisions, or people running, walking, exercising and socializing. Owners can expect to experience substantial levels of sound, music, noise, odors, vibrations and other nuisances from other Units and areas within the Condominium and from other developments in the vicinity of the Condominium. Owners may also experience light entering a Unit from commercial lighting, LED signs and displays, and other activity in the vicinity of and from street lights located in close proximity to the windows and doors of the Units. The Owners of Commercial Units may also host special events and redirect traffic as well as ingress and egress into the Units during such events.

20.04 Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to promote or enhance the safety and security of Owners, their Guests and other occupants of the Units. No representation or warranty is made by Declarant or the Association that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Condominium, cannot be compromised or circumvented or that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and agrees, and shall be responsible for informing Guests and all other occupants of its Unit that the Association, the Executive Board, and Declarant are not insurers or guarantors of security or safety and that each Person within the Condominium assumes all risks of personal injury and loss or damage to property.

ARTICLE XXI  
MISCELLANEOUS

21.01 Interpretation of the Declaration.

Except for judicial construction, the Association, by its Executive Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and the provisions hereof.

21.02 Severability.

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

21.03 Disclaimer of Representations.

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Condominium can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, regardless of whether it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is at any time used for a particular use, that such use will continue in effect.

21.04 Reference to Declaration and Deeds.

Deeds to and instruments affecting any Unit or any other part of the Condominium may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

21.05 Successors and Assigns of Declarant.

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

21.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

21.07 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

21.08 Governing Law.

This Declaration shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to the conflict of law provisions thereof.

21.09 Notices.

All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address to the secretary of the Association within 10 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 to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to such address. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Confluence Fort Collins Condominium Association, Inc.  
c/o Confluence FC, LLC  
86 Inverness Place North  
Englewood, Colorado 80112  
Attention: Brett Parmelee

21.10 Waivers.

No waivers by the Association of any right of the Association shall constitute a waiver by Declarant of any right of Declarant.

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Lot 2, Confluence, located in the Northwest Quarter of Section 2, Township 7 North, Range 69 Wets of the 6<sup>th</sup> P.M., City of Fort Collins, County of Larimer, State of Colorado

EXHIBIT "B"

ADDITIONAL PROPERTY

None.

EXHIBIT "C"  
ALLOCATED INTERESTS

<u>Unit</u>	<u>Interest in Common Elements</u>	<u>Share Of Common Expenses</u>	<u>Share Of Commercial Common Expenses</u>	<u>Share Of Residential Common Expenses</u>	<u>Votes</u>
<b><u>Commercial Units</u></b>					
Commercial Unit 1-010	8.73%	8.73%	32.63%		4.33
Commercial Unit 1-101	12.88%	12.88%	48.14%		6.38
Commercial Unit 2-221	4.13%	4.13%	15.43%		2.05
Commercial Unit 2-229	1.01%	1.01%	3.80%		0.50
<b><u>Residential Units</u></b>					
Unit 1-201	3.19%	3.19%		4.35%	1
Unit 1-203	2.09%	2.09%		2.86%	1
Unit 1-205	3.49%	3.49%		4.77%	1
Unit 1-207	3.40%	3.40%		4.65%	1
Unit 1-301	2.88%	2.88%		3.93%	1
Unit 1-303	2.00%	2.00%		2.73%	1
Unit 1-305	3.49%	3.49%		4.76%	1
Unit 1-307	3.03%	3.03%		4.14%	1
Unit 1-403	4.88%	4.88%		6.66%	1
Unit 1-401	4.87%	4.87%		6.65%	1
Unit 2-321	1.99%	1.99%		2.72%	1
Unit 2-322	1.16%	1.16%		1.58%	1
Unit 2-421	4.22%	4.22%		5.76%	1
Unit 2-422	3.40%	3.40%		4.64%	1
Unit 3-231	1.82%	1.82%		2.48%	1
Unit 3-232	1.56%	1.56%		2.13%	1
Unit 3-233	1.80%	1.80%		2.46%	1
Unit 3-234	1.55%	1.55%		2.12%	1
Unit 3-235	1.66%	1.66%		2.26%	1
Unit 3-236	1.32%	1.32%		1.80%	1
Unit 3-331	3.30%	3.30%		4.51%	1
Unit 3-332	3.30%	3.30%		4.51%	1
Unit 3-333	3.30%	3.30%		4.51%	1
Unit 3-334	3.30%	3.30%		4.51%	1
Unit 3-335	3.12%	3.12%		4.25%	1
Unit 3-336	3.13%	3.13%		4.26%	1
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>39.26</b>

EXHIBIT "D"

LIST OF RECORDED EASEMENTS

1. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE RECORDED DECEMBER 03, 1976 AT RECEPTION NO. 174343. 11.
2. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE CREATING AND ESTABLISHING A DOWNTOWN DEVELOPMENT AUTHORITY RECORDED AUGUST 17, 1983 IN BOOK 2233 AT PAGE 473, AND AS AMENDED IN INSTRUMENT RECORDED AUGUST 17, 1983, IN BOOK 2233 AT PAGE 479, AND AS AMENDED IN INSTRUMENT RECORDED AUGUST 17, 1983 IN BOOK 2233 AT PAGE 483, AND AS AMENDED IN INSTRUMENT RECORDED AUGUST 16, 2000, AT RECEPTION NO. 200055926 AND 200055927, AND AS AMENDED IN INSTRUMENT RECORDED JANUARY 2, 2001 AT RECEPTION NO. 2001000166, AND AS AMENDED IN INSTRUMENT RECORDED MARCH 19, 2004, AT RECEPTION NO. 2004-0025560, AND AS AMENDED IN INSTRUMENT RECORDED MAY 20, 2004 AT RECEPTION NO. 2004-0048265, AND AS AMENDED IN INSTRUMENT RECORDED OCTOBER 6, 2005 AT RECEPTION NO. 2005- 0085091 AND AS AMENDED IN INSTRUMENT RECORDED APRIL 30, 2008 AT RECEPTION NO. 20080027067
3. TERMS, CONDITIONS AND PROVISIONS OF NO-BUILD EASEMENT RECORDED MAY 14, 2014 AT RECEPTION NO. 20140024438 AND RE-RECORDED MAY 21, 2014 AT RECEPTION NO. 20140025977.
4. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF CONFLUENCE RECORDED AUGUST 31, 2018 AT RECEPTION NO. 20180054269.
5. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT AGREEMENT RECORDED SEPTEMBER 06, 2018 AT RECEPTION NO. 20180055287.
6. TERMS, CONDITIONS AND PROVISIONS OF PARKING AGREEMENT RECORDED SEPTEMBER 18, 2018 AT RECEPTION NO. 20180057406 AND ASSIGNMENT RECORDED OCTOBER 25, 2018 AT RECEPTION NO. 20180065502.
7. TERMS, CONDITIONS AND PROVISIONS OF ACCESS EASEMENT AGREEMENT RECORDED DECEMBER 06, 2018 AT RECEPTION NO. 20180074488.
8. TERMS, CONDITIONS AND PROVISIONS OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT RECORDED DECEMBER 14, 2018 AT RECEPTION NO. 20180076599.
9. TERMS, CONDITIONS AND PROVISIONS OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT RECORDED DECEMBER 14, 2018 AT RECEPTION NO. 20180076600.
10. TERMS, CONDITIONS AND PROVISIONS OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT RECORDED OCTOBER 25, 2018 AT RECEPTION NO. 20180076601.

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11. TERMS, CONDITIONS AND PROVISIONS OF TEMPORARY CONSTRUCTION EASEMENT AGREEMENT RECORDED DECEMBER 14, 2018 AT RECEPTION NO. 20180076602.
12. TERMS, CONDITIONS AND PROVISIONS OF DEED OF DEDICATION OF EASEMENT RECORDED MARCH 04, 2019 AT RECEPTION NO. 20190010785.
13. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. AD 19-01 RECORDED MARCH 04, 2019 AT RECEPTION NO. 20190010786.
14. TERMS, CONDITIONS AND PROVISIONS OF FACADE AGREEMENT RECORDED January 14, 2020 AT RECEPTION NO. 20200003068.