

**CONDOMINIUM DECLARATION  
FOR  
CHERRY STREET LOFTS CONDOMINIUMS  
(a Common Interest Mixed Community)**

THIS DECLARATION is made and entered into this 4<sup>TH</sup> day of APRIL, 2006, by CAMBIUM DEVELOPMENT, INC., a Colorado corporation, hereinafter referred to as "the Declarant."

**RECITALS**

A. The Declarant is the owner of that certain real property located in the City of Fort Collins, County of Larimer, State of Colorado, legally described on Exhibit "A" attached hereto and incorporated herein by reference ("the Real Estate").

B. The Declarant desires to create a Common Interest Mixed Community on the Real Estate, pursuant to the Colorado Common Interest Ownership Act, Section 38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time ("the Act"), in which portions of the Real Estate will be designated for separate ownership and the remainder of which will be for common ownership solely by the Owners of the separate ownership interests.

C. The Declarant has caused to be incorporated under the laws of the State of Colorado CHERRY STREET LOFTS CONDOMINIUM ASSOCIATION, a nonprofit corporation, for the purpose of exercising the functions herein set forth, and all Unit Owners being a Member thereof.

**ARTICLE I. SUBMISSION OF REAL ESTATE**

The Declarant hereby publishes and declares that the Real Estate shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which shall run with the Real Estate and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Real Estate or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant hereby submits the Real Estate to the provisions of the Act. In the event the Act is repealed, the Act on the effective date of this Declaration shall remain applicable.

*Greg Glebe*

## ARTICLE II. DEFINITIONS

Section 1: Definitions. When used in this Declaration, unless the context clearly indicates otherwise, capitalized terms not otherwise defined in the Act or in the Condominium Map of the Real Estate shall have the meanings provided in the following subsections of this Article:

- A. "Allocated Interests" shall mean and refer to the Common Expense Liability and votes in the Association.
- B. "Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making, or suffering that for which such approval or consent is required.
- C. "Association" or "Unit Owners' Association" shall mean and refer to a unit owners' association organized and existing under Section 38-33.3-301 of the Act.
- D. "Bylaws" shall mean and refer to any instruments, however denominated, which are adopted by the Association for the regulation and management of the Association, including amendments to those instruments.
- E. "Commercial Use" shall mean all uses permitted by the City of Fort Collins Land Use Code for the Common Interest Mixed Community, EXCEPT Commercial Units (Units C1 through C5) shall not be open to the public from 9 p.m., Fort Collins time, until 7 a.m. the following day. The Board of Directors shall have the authority to extend the hours that Commercial Units may be open to the public so long as all Commercial Units shall be regulated the same. The Board of Directors shall have the power to make rules and regulations to govern the activities in and in front of the Commercial Units from time to time to ensure the quiet enjoyment of the Residential Units and Commercial Units. In making such rules, the Board of Directors shall always be aware of the economic necessities of the commercial businesses. In adopting rules and regulations, loitering or begging without visual means of support or acting in such a way as to cause discomfort to the Unit Owners and their guests shall be considered. Noxious fumes and/or odors from a Commercial or Residential Unit are prohibited and the Unit Owner from where the noxious fumes and/or odors are emitted shall abate such nuisance. There shall be no tattoo or massage parlors or similar activities in the Common Interest Mixed Community.

F. "Common Elements" shall mean and refer to all portions of the Condominium other than the Units.

G. "Common Expense Liability" shall mean and refer to the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

H. "Common Expenses" shall mean and refer to expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

I. "Common Interest Mixed Community" shall mean and refer to the Real Estate and all improvements constructed thereon.

J. "Declarant" shall mean and refer to any Person or group of Persons acting in concert who:

(1) As a part of a common promotional plan, offers to dispose of to a Purchaser or renter such Declarant's interest in a Unit not previously disposed of to a Purchaser; or

(2) Reserves or succeeds to any Special Declarant Right.

K. "Declaration" shall mean and refer to this Declaration, including any amendments hereto and also including, but not limited to, plats and maps of the Real Estate recorded in the Clerk and Recorder's office of Larimer County, Colorado.

L. "Dispose" or "Disposition" shall mean and refer to a voluntary transfer of any legal or equitable interest in a Unit, but the term does not include the transfer or release of a security interest.

M. "Documents" shall mean and refer to this Declaration, the Condominium Map(s) as recorded and filed, the Articles of Incorporation, the Bylaws, and the Rules and Regulations as they may be amended from time to time, together with any exhibit, schedule or certificate accompanying such Documents.

N. "Eligible Insurer" shall mean and refer to an insurer or guarantor of a First Security Interest in a Unit (i.e. HUD, FHA, or VA). An Eligible Insurer must notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a First Security Interest in a Unit. It must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a

request that the Eligible Insurer be given the notices and other rights described in this Declaration.

O. "Eligible Mortgagee" shall mean and refer to the holder of a First Security Interest in a Unit when the holder has notified the Association, in writing, of its name and address and that it holds a First Security in a Unit. The notice must include the Unit number and address of the Unit on which it has a Security Interest. Such notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in this Declaration.

P. "Executive Board" or "Board of Directors" shall mean and refer to the Executive Board and/or Board of Directors of the Association.

Q. "Garage Unit" shall mean five (5) separate units to be used for garage purposes only.

R. "Garage Unit Owners" shall mean the Owner of a Garage Unit.

S. "Identifying Number" shall mean and refer to a symbol that identifies only one (1) Unit in the Common Interest Mixed Community.

T. "Insurer" shall mean and refer to any governmental agency or authority that insures or guarantees a Mortgage and who has provided written notice of such interest to the Association.

U. "Limited Common Elements" shall mean and refer to a portion of the Common Elements allocated by this Declaration or by the operation of Section 38-33.3-202(1)(b) or (1)(d) of the Act for the exclusive use of one or more Units but fewer than all of the Units.

V. "Mortgagee" shall mean and refer to any Person who has a security interest in a Unit, and who has provided written notice of such interest to the Association.

W. "Owner" when the context so indicates shall mean Unit Owner.

X. "Person" shall mean and refer to a natural person, a corporation, a partnership, an association, a trust, or any other entity or combination thereof.

Section 3: Condominium. The Common Interest Mixed Community is a condominium and each Unit shall be a condominium.

Section 4: County. The name of every county in which any part of the Common Interest Mixed Community is situated is Larimer County, Colorado.

Section 5: Legal Description. A legal description of the Real Estate included in the Common Interest Mixed Community is described on Exhibit "A".

Section 6: Maximum Number of Units, Garage Units, and Storage Units. The maximum number of Units that the Declarant reserves the right to create within the Common Interest Mixed Community is seventeen (17), the maximum number of Garage Units is five (5), and the maximum number of Storage Units is four (4).

Section 7: Boundaries of Units. The boundaries of each Unit are located as shown on the Plat and are more particularly described as follows:

- (a) Walls, floors, and ceilings are designated as boundaries of a Unit.
- (b) Each Unit may include the electrical, heating, hot water, and air-conditioning apparatus exclusively serving the Unit, whether or not located within the boundaries of the Unit.

Section 8: Identification of Units. The identification number of each Unit is shown on the Plat.

Section 9: Allocated Interests. The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association shall be allocated among the Unit Owners and Garage Unit Owners as follows:

- (a) Each Unit Owner's and Garage Unit Owner's share of the undivided interest in the Common Elements and Common Expenses shall be a fraction, the numerator of which shall be the Factor for each Unit set forth on Exhibit "B" attached hereto and incorporated herein by reference and the denominator of which shall be the total number of all Unit Factors set forth on Exhibit "B".
- (b) Each Unit Owner and Garage Unit Owner shall be entitled to the number of votes for each Unit and Garage Unit as set forth on Exhibit "B".

The undivided interest in the Common Elements, Common Expense Liability, and votes in the Association for each Unit and Garage Unit are set forth on Exhibit "B" attached hereto and incorporated herein by reference ("Allocated Interest").

Section 10: Recording Data. All easements and licenses to which the Common Interest Mixed Community is presently subject are described on Exhibit "C" attached hereto and incorporated herein, the Plat, which is a matter of record in the records of the Clerk and Recorder of Larimer County, the Development Agreement with the City of Fort Collins, the Agreement of Restrictive Covenants Affecting Real Property recorded in the records of the Clerk and Recorder of Larimer County, and the City of Fort Collins Land Use Code.

Section 11: Notice. Notice of matters affecting the Common Interest Mixed Community may be given to Unit Owners by the Association or by other Unit Owners in the following manner: notice shall be hand delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. Such notice shall be deemed given when hand delivered or when deposited in the United States mail.

#### **ARTICLE IV. DESCRIPTION, CONVEYANCE, OWNERSHIP AND TAXATION OF CONDOMINIUM UNITS**

Section 1: Division of Property into Condominium Units. The Real Estate, including the improvements thereon, shall be divided into fifteen (15) fee simple condominium estate Units and five (5) fee simple condominium estate Garage Units. Each Unit and Garage Unit shall consist of a separately designated Unit and Garage Unit and an undivided interest in and to the Common Elements appurtenant to each Unit and Garage Unit. The undivided interest in the Common Elements appurtenant to each Unit and Garage Unit constructed upon the Real Estate is set forth on Exhibit "B" attached hereto and incorporated herein by reference. Units C1 and C5 are double size Units. The Owner of either Unit shall have the right to file a supplemental map and amendment to this Declaration dividing either or both Units into two Units for each now existing Unit. If the Units are divided, they shall be designated as Units C1-A and C1-B, and Units C5-A and C5-b. Each Unit shall consist of a near equal division and if Unit C1 is divided, Exhibit "B" shall be amended to give C1-A and C1-B each a Factor of six (6), Undivided Interest in Common Elements of 6/131 and Association Votes of six (6) for each; and if Unit C5 is divided, Exhibit "B" shall be amended to give C5-A and C5-B each a Factor of six (6), Undivided Interest in Common Elements of 6/131, and Association Votes of six (6) each. By these presents, the Declarant assigns the right to the Owner(s) of Units C1 and C5 to make the division of said Units and file supplements to the Map and amendments to this Declaration. The Owner(s) making the division of a Unit shall pay all costs and expenses

associated with the physical division, supplement to the Map, and amendment of the Declaration, and shall advise the County Assessor of the new Units created.

Section 2: Common Elements. Subject to the right of the Association to adopt reasonable, nondiscriminatory and uniform rules and regulations regarding usage, all of the Owners of Units in this Common Interest Mixed Community shall have a nonexclusive right in common with all of the other Owners to use the open spaces located within the entire Common Interest Mixed Community. In addition to rights of use described in this Declaration, the Association, its Executive Board, and its managers shall have an unrestricted irrevocable easement to traverse, cross, and utilize any portion of the Common Elements which may be necessary in order to maintain, repair or replace General and/or Limited Common Elements. Except as specifically herein required, no reference thereto need be made in any instrument or conveyance or other instrument in accordance with Section 4 of this Article IV.

Section 3: Identification of Units. The Identifying Name, Letter, and Number of each Unit and Garage Unit shall be shown on the Condominium Map. Units for commercial use shall be designated with a "C" and Units for residential use shall be designated with an "R."

Section 4: Description of Condominium Unit.

(a) Every contract for the sale of a Unit and/or Garage Unit written prior to the recordation of the Condominium Map and this Declaration may legally describe the Unit by its identifying Unit designation, followed by the words "Cherry Street Lofts Condominiums." The location of such Units or Garage Units shall be depicted on the Condominium Map subsequently recorded in the county of Larimer, state of Colorado. Such description shall be conclusively presumed to relate to the thereon described Units or Garage Units.

(b) After the Condominium Map and this Declaration have been recorded in the office of the Clerk and Recorder of Larimer County, Colorado, every contract, deed, lease, Security Interest, trust deed or will or other instrument may legally describe a Unit or Garage Unit as follows:

Condominium Unit \_\_\_\_\_, (or Garage Unit \_\_\_\_\_), CHERRY STREET LOFTS CONDOMINIUMS, in accordance with the Condominium Map of Cherry Street Lofts Condominiums recorded on \_\_\_\_\_, 2006, at Reception No. \_\_\_\_\_, and subject to

the Condominium Declaration for Cherry Street Lofts Condominiums recorded on \_\_\_\_\_, 2006, at Reception No. \_\_\_\_\_ of the Larimer County, Colorado records.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit and Garage Unit, but also the undivided interest in the common Elements appurtenant to said Unit and Garage Unit and all other appurtenant properties and property rights, and incorporate all of the rights and burdens incident to ownership of a Unit or Garage Unit and all of the limitations thereon as described in this Declaration and the Condominium Map. Each such description shall be construed to include a nonexclusive easement for use of all of the Limited Common Elements appurtenant to said Unit and Garage Unit as well as all the General Common Elements.

(c) The reference to the Condominium Map and Declaration in any instrument shall be deemed to include any amendment and/or supplement to the Condominium Map or Declaration, without specific reference(s) thereto.

Section 5: Condominium Map. Subject to the limitations contained herein, the Condominium Map may be filed for record when the construction of the Units and Garage Units and other improvements are substantially completed or as already constructed. Each Condominium Map filed subsequent to the first shall be termed a supplement and a numerical sequence of such supplements shall be shown thereon. The Condominium Map, or any part of a section thereof depicting Units, shall not be filed for record until an independent licensed or registered engineer, surveyor or architect shall have certified that all structural components of any Unit thereby created are substantially completed in accordance with the provisions of the Act.

Section 6: Inseparability. Except for the right to divide Units C1 and C5, each Unit and Garage Unit, as well as all other appurtenances, rights and burdens connected therewith, shall be inseparable and may be transferred, conveyed, leased, devised, encumbered or otherwise disposed of only as a Unit or Garage Unit. Every transfer, conveyance, lease, devise, encumbrance or other disposition of a Unit or Garage Unit shall be deemed to be a transfer, conveyance, lease, devise, encumbrance or other disposition, as the case may be, of the entire Unit or Garage Unit, together with all appurtenant rights, interests, duties, and obligations created by law or by this Declaration.

Section 7: Taxation. Each Unit shall be assessed separately for all taxes, assessments, and other charges of the state of Colorado, any political subdivision thereof, any special improvement district and any other taxing or assessing authority, in accordance



with the Act. For purposes of such assessments, the valuation of the Common Elements shall be apportioned among the Units in proportion to the undivided interest in the Common Elements appurtenant to the Unit in question. The Association shall furnish to the Tax Assessor of the County of Larimer, Colorado, and to all other appropriate persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit. Garage Units shall be assessed with the Unit owned by the same Owner as the Garage Unit.

Section 8: Form of Ownership – Title. A Unit may be held and owned in any real property tenancy relationship recognized under the laws of the state of Colorado. The right of any Owner to sell, transfer or otherwise convey his Unit or Garage Unit shall not be subject to any right of first refusal in the Declarant.

Section 9: Non-Partitionability and Transfer of Common Elements. The Common Elements shall be owned in common by all of the Owners and shall remain undivided and not subject to partition, such that any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit or Garage Unit to which that interest is allocated is void. By acceptance of this deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Furthermore, each Owner agrees that this section may be pled as a bar to the maintenance of such an action. Any violation of this section shall entitle the Association to collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs, expenses, and all damages, which the Association incurs in connection therewith.

## ARTICLE V. ASSOCIATION

Section 1: Authority. The business and affairs of the Common Interest Mixed Community shall be managed by the Association. The Association shall be governed by its Bylaws as amended from time to time.

Section 2: Powers. The Association shall have all of the powers, authority, and duties permitted pursuant to the Act necessary and proper to manage the business and affairs of the Common Interest Mixed Community.

Section 3: Declarant Control. The Declarant, or persons designated by it, may appoint and remove the officers and members of the Executive Board of the Association for a period of seven (7) years after recordation in the office of the Clerk and Recorder of

Larimer County, Colorado, of this Declaration. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act.

Section 4: Executive Board Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration or the Bylaws. The Executive Board shall have, subject to the limitations contained in this Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association and of the Common Interest Mixed Community, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws.
- (b) Adopt and amend Rules and Regulations for parking, use of Common Elements, and as generally required for the use of the Real Estate.
- (c) Adopt and amend budgets for revenues, expenditures and reserves.
- (d) Collect assessments from Unit Owners, open checking and savings accounts, and withdraw funds for the payment of Association obligations.
- (e) Hire and discharge managing agents.
- (f) Hire and discharge independent contractors, employees, and agents other than managing agents.
- (g) Institute, defend, or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Documents in the Association's name, on behalf of the Association, or two (2) or more Unit Owners on any matters affecting the Common Interest Mixed Community.
- (h) Make contracts and incur liabilities.
- (i) Regulate the use, maintenance, repair, replacement, and modification of the Common Elements.
- (j) Cause additional improvements to be made as a part of the Common Elements.
- (k) Acquire, hold, encumber, and convey in the Association's name, any right, title, or interest to real estate or personal property, but the

Common Elements may be conveyed or subjected to a Security Interest only pursuant to this Declaration and applicable law.

- (l) Grant easements for any period of time, including permanent easements, leases, licenses, and concessions through or over the Common Elements.
- (m) Impose and receive a fee or charge for the use, rental, or operation of the Common Elements and for services provided to Unit Owners.
- (n) Impose a reasonable charge for late payment of assessments and levy a reasonable fine for violation of this Declaration, the Bylaws, and the Rules and Regulations of the Association.
- (o) Impose a reasonable charge for the preparation and recordation of supplements or amendments to this Declaration and for statements of unpaid assessments.
- (p) Provide for the indemnification of the Association's officers and the Executive Board and maintain Directors' and officers' liability insurance.
- (q) Maintain such casualty, liability, flood, and other insurance policies and fidelity bonds as set forth in Section 6 of Article XV.
- (r) Assign the Association's right to future income, including the right to receive Common Expense Assessments, only upon the affirmative vote of the Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, at a meeting called for that purpose.
- (s) Provide for the payment of any expenses properly assessed against the Real Estate pursuant to any underlying covenants, conditions, and restrictions affecting the Real Estate.
- (t) Exercise any other powers conferred by the Documents.
- (u) Exercise any other power that may be exercised in the state of Colorado by a legal entity of the same type as the Association.
- (v) Exercise any other power necessary and proper for the governance and operation of the Association.

- (w) By resolution, establish permanent and standing committees of Directors to perform any of the above functions under specifically delegated administrative standards as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board.

However, actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of a notice. If an appeal is made, the committee's action must be ratified, modified, or rejected by the Executive Board at its next regular meeting.

- (x) The right to make changes or revisions to the Declaration to comply with requirements of HUD, FannieMae (FNMA), FreddieMac (FHLMC), VA or FHA.
- (y) Act, or appoint person(s) to act, with respect to voting and other actions and rights vested in the owner of the Real Estate by any underlying covenants affecting the Real Estate.
- (z) Maintain the Common Elements and the vegetation of the open space area, including, without limitation, planting and maintaining vegetation and installing and operating irrigation and sprinkler systems and to pay all expenses related thereto.
- (aa) Contract and pay for water, sewer services, trash removal, and cable service. Each Residential Unit shall have a separate sub-meter, which meter shall be read each six (6) months and the average monthly use for each Unit for the six (6) months shall be used for the billing for the next six (6) months to the Unit Owners. The Commercial Units are attached to the landscape water meter. Each Commercial Unit shall have a sub-meter and shall be charged for the Commercial Unit's individual use. The cost of sewer service shall be prorated on the same basis as water use. Trash removal and cable service shall be allocated as an Association Common Expense Assessment. Except, the Hattie House shall have its own separate water, sewer, gas, electric, and cable services which shall be billed to and paid by the Owner.
- (bb) Collect dues to be paid to the Association from the Unit Owners.

- (cc) Make assessments to establish reserves for the repair, maintenance, and replacement of General Common Elements, which reserves shall be held in a separate reserve account.
- (dd) Adopt reasonable rules and regulations for the permitted uses of Units C1 through C5 as required to define Commercial Use. The nature of the permitted business must be considered in the adoption of the rules as well as the residential uses in the Units above.
- (ee) Designate the Unit Owner that has the right to use a Storage Unit from time to time. Only Residential Unit Owners may use a Storage Unit and no Residential Unit Owner that owns a Garage Unit or use of a designated parking space can be a designated user of a Storage Unit.

Section 5: Professional Management and Contract Termination Provisions. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maximum term of three (3) years and shall provide for termination by either party thereto, with or without cause, and without payment of a termination fee, within not more than ninety (90) days' prior written notice. Any contracts, licenses, or leases entered into by the Association while there is Declarant control of the Association shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, at any time after termination of Declarant control of the Association, within not more than ninety (90) days' prior written notice; provided, however, that any contract entered into at any time by the Association providing for services of the Declarant shall provide for termination at any time by either party thereto without cause and without payment of a termination fee within not more than ninety (90) day's prior written notice. In addition, any management agreements entered into by the Association with a manager or managing agent prior to the termination of the period of Declarant control shall be subject to review and approval by HUD or VA if, at the time such agreement is entered into, HUD has insurance or VA has a guarantee(s) on one (1) or more First Security Interests.

Section 6: Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Common Interest Mixed Community, or to elect members of the Executive Board or determine their qualifications, powers, and duties or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

**ARTICLE VI. SPECIAL DECLARANT RIGHTS AND  
ADDITIONAL RESERVED RIGHTS**

Section 1: Special Declarant Rights. Declarant hereby reserves the right for a period of seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado, to perform the acts and exercise the rights hereinafter specified ("the Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

- (a) Completion of Improvements. The right to complete or make improvements indicated on the Plat.
- (b) Exercise of Developmental Rights. The right to exercise any Expansion or Development Right reserved in Article VII of this Declaration.
- (c) Sales Management and Marketing. The right to maintain one (1) sales office, one (1) management office, and signs advertising the Common Mixed Interest Community.
- (d) Construction Easements. The right to use the Common Elements for the purpose of making improvements within the Common Interest Mixed Community or within the Real Estate. The right to construct and complete the construction of the Units, utilities, entrance signage, landscaping, Buildings, and all other improvements on the Real Estate and to repair and maintain the Common Elements.
- (e) Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.
- (f) Amendment of Declaration. The right to amend and supplement the Declaration to the actual or proposed location of Commons Elements, building(s) and/or Unit(s).
- (g) Amendment of Plat. The right to amend and supplement the Plat in connection with the exercise of any right reserved in Article VII.

Section 2: Additional Reserved Rights. In addition to the Special Declarant Rights set forth in Section 1 above, Declarant also reserves the following additional rights ("the Additional Reserved Rights"):

(a) Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of and to serve the Unit Owners within the Common Interest Mixed Community.

(b) Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, which may or may not be a part of the Common Interest Mixed Community for the benefit of the Unit Owners and/or the Association.

(c) HUD, et al. Compliance. The Declarant reserves the right to make changes or revisions to the Declaration to comply with requirements of HUD, FannieMae (FNMA), FreddieMac (FHLMC), VA or FHA.

(d) Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 3: Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person by this Declaration and/or an instrument describing the rights transferred and recorded in Larimer County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee. Declarant, by these presents, transfers the rights set forth in Article IV, Section 1 above.

## **ARTICLE VII. RESERVATION OF EXPANSION AND DEVELOPMENT RIGHTS**

Section 1: Expansion Rights. Declarant expressly reserves the right to divide Units C1 and C5 into two (2) additional Units and/or to transfer this reserved right to the Owner(s) of Units C1 and/or C5. The consent of the existing Unit Owners or Mortgagees shall not be required for any such division, and Declarant and/or Owner may proceed with at the Declarant's or Owner's sole option. A supplemental map and amended Declaration shall be recorded to show the divided Unit, see Article IV, Section 1.

Section 2: Maximum Number of Units. The maximum number of Units in the Common Interest Mixed Community, as expanded, shall not exceed the number set forth in Article III, Section 6 above or the maximum number of Units allowed by any governmental

entity having jurisdiction over the Real Estate, pursuant to any development plan for the Real Estate. Declarant shall not be obligated to expand the Common Interest Mixed Community beyond the number of Units initially submitted to this Declaration.

Section 3: Construction Easement. Declarant expressly reserves the right to perform construction work, store materials on Common Elements, and the future right to control such work and the right of access thereto until its completion. All work may be performed by Declarant without the consent or approval of any Unit Owner or Mortgagee. Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration. Such easement includes the right to construct underground utility lines, pipes, wires, ducts, conduits, and other facilities across the Real Estate for the purpose of furnishing utility and other services to the additional Units. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements. If Declarant grants any such easements, the Plat will be amended to include reference to the recorded easement.

Section 4: Termination of Expansion and Development Rights. The expansion and development rights reserved to Declarant, for itself and its successors and assigns, shall expire seven (7) years from the date of recording this Declaration, unless the expansion and development rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion and development rights by Declarant. or the expansion is the division of Units C1 and C5.

Section 5: Transfer of Expansion and Development Rights. Any expansion, development, or withdrawal right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by this Declaration or an instrument describing the rights transferred and recorded in Larimer County, Colorado. If by separate instrument, it shall be executed by the transferor Declarant and the transferee.

## **ARTICLE VIII. ASSESSMENT FOR COMMON EXPENSES**

Section 1: Personal Obligation of Owners for Common Expenses. The Declarant, for each Unit owned, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association Common Expense Assessments imposed by the Association in the same ratio as the Undivided Interest in the Common Elements, Exhibit "B," except where metered. Such Assessments, including fees, charges, late charges, attorney's fees, fines, and interest, charged by the Association shall be the personal obligation of the Unit Owner at the time when the Assessment or other charges became or



fell due. The personal obligation to pay any past-due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

Section 2: Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and for the improvement, repair, replacement, and maintenance of the Common Elements. There is one water tap and one sewer tap; water and sewer charges shall be assessed to the Unit Owners as a Common Expense, water usage shall be metered separately for each Unit. Hattie House shall have its separate water and sewer tap and shall be billed directly to the Unit Owner. Other Common Expenses shall be billed to the Hattie House based on its factor. Common insurance for casualty, property damage, personal injury, flood, fidelity bonds, and other broad coverage as set forth in Section 6 of Article XV shall be a Common Expense.

Section 3: Budget. Within thirty (30) days after the adoption of any proposed budget for the Common Interest Mixed Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Executive Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Executive Board does not require approval from the Owners and it will be deemed approved by the Owners unless the budget is rejected by a vote of more than fifty percent (50%) of all Owners, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last proposed by the Executive Board and not rejected by the Owners must be continued until a subsequent budget proposed by the Executive Board is not rejected by the Owners.

Section 4: Amount of Assessment. The amount of the Assessment for the estimated Common Expenses which shall be paid by each Owner shall be determined by dividing the aggregate sum the Association reasonably determines to be paid by all Owners by the number of units within the Common Interest Mixed Community and the Owner of each Unit shall pay his proportionate share of such aggregate sum.

Section 5: Initial Annual Assessment. Until the effective date of an Association budget with a different amount for the annual assessment, as provided above, the amount of the annual assessment against each Unit shall be computed at a rate to be set by the Executive Board. Assessments for the year 2006 shall be determined by the Executive Board.

Section 6: Accounting Year; Assessment Period. The Association shall operate on a calendar accounting year, i.e. January through December, and the Assessment period

shall likewise be the calendar year. The first Assessment period shall be from the first of the month in which the first monthly installment shall be due through December 31 of that year.

Section 7: Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of a Unit by the Declarant to a Purchaser. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Executive Board shall fix the amount of the annual Assessment against each Unit at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board. The Executive Board may, at its discretion, permit annual assessments to be payable in twelve (12) equal monthly installments.

Section 8: Special Assessments. In addition to the annual assessments authorized in this Article, the Executive Board may levy, in any fiscal year, with the approval of the votes of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements or any property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed improvements, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Unit in accordance with the Allocated Interests therefor. A meeting of the Members called for the purpose of considering the establishment of a special assessment shall be held in conformance with the Bylaws. Notwithstanding the foregoing, special assessments levied during the period of Declarant control may not be used for the purpose of constructing capital improvements.

Section 9: Reserve Fund. Upon the sale, transfer, or conveyance of a Unit, the purchaser or transferee shall deposit with the Association as a reserve fund an amount equal to one-fourth of the annual assessment established by the Executive Board for the year in which the transfer occurs. If, at any time, an Owner is in default in the payment of any assessments due to the Association, the Association shall have the right to use said reserve, or as much thereof as may be necessary, to pay any delinquent amount owed to the Association and to reimburse the Association for any expenses incurred by the Association in collecting delinquent assessments from the Owner. In such event, the Owner shall, upon written demand of the Association, promptly remit to the Association a sufficient amount of cash to restore the reserve to its original amount. In the event the reserve account is not used to make delinquent payments, then it shall be refunded to the Owner upon the sale of the Owner's Unit without interest. The Association shall have the right to commingle the reserve account with other funds of the Association and shall have no obligation to retain

the reserve funds in a separate account or pay interest on the reserve funds. The reserve account shall not be deemed to be liquidated damages, and if claims of the Association against an Owner exceed the reserve account, the Owner shall remain liable for the payment of the balance of such claims to the Association.

Section 10: Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future assessments.

Section 11: Statement of Assessment. The Association shall furnish to an Owner, an Owner's designee, or to an eligible Mortgage or its designee, a written statement setting forth the unpaid assessment, and if such statement is not provided to the inquiring party within fourteen (14) days after receipt of the request, then the Association will have no right to assert a lien upon the Unit for unpaid assessments that were due as of the date of the request.

#### **ARTICLE IX. LIEN FOR NONPAYMENT OF COMMON EXPENSES**

Section 1: Priority of Association Lien.

(a) The Common Expense Assessments of the Association shall be a continuing lien upon the Unit against which each Assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit, except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first-lien security interest on the Unit; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Association's lien, except that sale or transfer of any Unit pursuant to a foreclosure of any first-lien security interest or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture, shall only extinguish the Association's lien as provided in the Act. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure nor cancellation nor forfeiture, shall relieve any Unit from continuing liability for any Common Expense Assessments thereafter becoming due nor from the lien thereof.

(b) A lien under this Section is also prior to the First Security Interests described in the preceding subsection (a)(2) to the extent of an amount equal to the

annual assessment based on a periodic budget adopted by the Association as provided above which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(c) The lien in favor of the Association is not subject to any claim for homestead exemption or any other exemption, right to elective share, allowances or other provisions of testate or intestacy laws providing preferential treatment or exemption, and each Unit Owner and that Owner's spouse, heirs, successors, representatives, and assigns by acceptance of ownership of a Unit hereby waives with respect to the lien of the Association all claims for such exemptions or preferential treatment otherwise provided by state or federal laws.

Section 2: Effect of Nonpayment of Assessments; Remedies of Association. Any Assessment, charge, or fee provided for in this Declaration or any monthly or other installment thereof which is not fully paid within ten (10) days after the date due shall bear interest at a rate determined by the Executive Board. In addition, the Executive Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, charge, or fee of the Association shall also be obligated to pay to the Association, on demand, all costs and expenses incurred by the Association, including reasonable attorney's fees, in attempting to collect the delinquent amount. The total amount due to the Association, including unpaid Assessments, fees, charges, fines, interest, late payment penalties, costs, and attorney's fees, shall constitute a lien on the defaulting Owner's Unit as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association or any monthly or other installment thereof and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association or monthly or other installments thereof may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien.

## **ARTICLE X. MORTGAGEE PROTECTION**

Section 1: Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

Section 2: Notice of Actions. The Association shall give prompt written notice to each Mortgagee and Insurer of (and each Unit Owner hereby consents to and authorizes such notice):

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Mixed Community or any Unit in which there is a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable.

(b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner whose Unit is subject to a First Security Interest held, insured, or guaranteed by such Mortgagee or Insurer, as applicable, which remains uncured for a period of sixty (60) days.

(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 a specified percentage of Mortgagees as specified in Section 4 of this Article X.

(e) Any judgment rendered against the Association.

Section 3: Consent and Notice Required.

(a) Document Changes. Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any provision of this Declaration pertaining to the matters hereinafter listed by the Association or Unit Owners shall be effective without notice to all Mortgagees and Insurers, and the vote of at least sixty-seven percent (67%) of the total votes of all Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and until approved by at least fifty-one percent (51%) of the Mortgagees (or any greater Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right:

- (1) Voting rights.
- (2) Assessments, assessment liens, or priority of assessment liens.
- (3) Reserves for maintenance, repair, and replacement of Common Elements.

- (4) Responsibility for maintenance and repairs.
- (5) Reallocation of interests in the Common Elements or Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Unit Owners and the Mortgagees holding Security Interests in such Units need approve such action.
- (6) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved or a Unit is being subdivided, then only those Unit Owners and the Mortgagees holding Security Interests in such Unit or Units must approve such action.
- (7) Convertibility of Units into Common Elements or Common Elements into Units.
- (8) Expansion or contraction of the Common Interest Mixed Community or the addition, annexation, or withdrawal of property to or from the Common Interest Mixed Community, except expansion or contraction by exercise of Development Rights pursuant to Article VI.
- (9) Insurance or fidelity bonds.
- (10) Leasing of Units.
- (11) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit.
- (12) A decision by the Association to establish self-management when professional management had been required previously by the Declaration or any Mortgagee.
- (13) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than that specified in the Declaration.
- (14) Termination of the Common Interest Mixed Community after occurrence of substantial destruction or condemnation of the Common Elements.

(15) Any provision that expressly benefits mortgage holders, insurers, or guarantors.

(b) **Actions.** Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without the notice to all Mortgagees and Insurers as required by Section 2 above and approval of at least fifty-one percent (51%) (or the indicated percentage) of the Mortgagees:

- (1) Convey or encumber the Common Elements or any portion thereof without approval by eighty percent (80%) of the Mortgagees. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Mixed Community will not be deemed a transfer within the meaning of this clause.)
- (2) The termination of the Common Interest Mixed Community for reasons other than substantial destruction or condemnation of the Common Elements without approval by sixty-seven percent (67%) of the votes of Mortgagees.
- (3) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case, only the Owners of Units affected and Mortgagees of those Units need approve the action.
- (4) The granting of any permits, easements, leases, licenses, or concessions through or over the Common Elements (excluding, however, any utility, road, or other easements serving or necessary to serve the Common Interest Mixed Community and excluding any leases, licenses, or concessions for no more than one [1] year).
- (5) Restoration or repair of the Common Elements after a hazard damage or partial condemnation in a manner other than specified in the Declaration.

- (6) The merger of the Common Interest Mixed Community with any other common interest community.
- (7) The assignment of the future income of the Association, including its right to receive Common Expense assessments.
- (8) Any action taken not to repair or replace the Common Elements.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly without the consent of all Mortgagees.

(d) The failure of a Mortgagee or Insurer to respond within thirty (30) days to any written request of the Association delivered by certified or registered mail, return receipt requested, for approval of an addition or amendment to the Declaration wherever Mortgagee or Insurer approval is required shall constitute an implied approval of the addition or amendment.

Section 4: Development Rights.

(a) No Development Rights may be voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the abandonment or termination.

(b) In the event that Development Rights are exercised following seven (7) years after recordation in the office of the Clerk and Recorder of Larimer County, Colorado, of this Declaration, they may not be exercised without consent to the extension of this period of fifty-one percent (51%) of the Mortgagees at the time of the extension.

Section 5: Inspection of Books. The Association must maintain current copies of the Declaration, Bylaws, Rules and Regulations, books and records, and financial statements. The Association shall permit any Mortgagee or Insurer to inspect the books and records of the Association during normal business hours.

Section 6: Financial Statements. The Association shall provide any Mortgagee or Insurer who submits a written request a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Mortgagee or Insurer requests it, in which case the Mortgagee or Insurer shall bear the cost of the audit.



Section 7: Enforcement. The provisions of this Article are for the benefit of Mortgagees and Insurers and their successors and may be enforced by any of them by any available means at law or in equity.

Section 8: Attendance at Meetings. Any representative of a Mortgagee or Insurer may attend and address any meeting that an Owner may attend.

Section 9: Appointment of Trustee. In the event of damage, destruction, or condemnation of all or a portion of the Common Elements, any Mortgagee may require that such proceeds be payable to a trustee. Such trustee may be required to be a corporate trustee licensed by the State of Colorado. Proceeds will there-after be distributed pursuant to the Act or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board, acting by majority vote through the president, may act as trustee.

#### **ARTICLE XI. LIMITED COMMON ELEMENTS**

Section 1: Limited Common Elements. "Limited Common Elements" means a portion of the Common Elements designated in this Declaration or on the Plat or by the Act for the exclusive use of one or more, but fewer than all, of the Units. In addition to those portions of the Common Elements described in Section 38-33.3-202(1)(b) and (1)(d) of the Act, the following are designated as Limited Common Elements: entryways, sidewalks, and patios.

Section 2: Allocation of Reserved Limited Common Elements. Portions of the Common Elements may be designated on the Plat as Common Elements, which may be allocated as Limited Common Elements. The Declarant reserves the right to allocate specified areas that constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which the specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of Section 38-33.3-208 of the Act by making such an allocation in a recorded instrument or in the deed to the Unit to which such Limited Common Element area shall be appurtenant or by recording an appropriate amendment or supplement to this Declaration. Such allocation by the Declarant may be to Units owned by the Declarant. The right of allocation pursuant to this Section shall pass from the Declarant to the Executive Board, and the Declarant may not thereafter exercise any such right of allocation subsequent to the date which is seven (7) years after this Declaration is recorded in the office of the Clerk and Recorder of Larimer County, Colorado. The period of Declarant control as herein set forth is subject to the limitations of Section 38-33.3-303(5) of the Act.

Section 3: Allocation of Specified Common Elements. The Executive Board may designate part of the Common Elements from time to time for use by less than all of the Unit Owners or by nonowners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Executive Board. Any such designation by the Executive Board shall not be a sale or disposition of such portion of the Common Elements.

## **ARTICLE XII. MAINTENANCE, REPAIR AND REPLACEMENT OF LIMITED COMMON ELEMENTS**

Section 1: Limited Common Elements. The Owner of a Unit to which any doorstep, porch, balcony or patio, is allocated shall be responsible for removal of any snow, leaves, and debris therefrom. The Owner shall also be responsible for the maintenance and upkeep of any trees, shrubs, flowers, and other landscaping within a patio area designated as a Limited Common Element on the Condominium Map.

Section 2: Expense Allocation. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed equally against the Units to which the Limited Common Element is assigned.

## **ARTICLE XIII. EASEMENTS**

Section 1: Recorded Easements. In addition to all easements and rights-of-way of record at or before the recording of this Declaration, the Real Estate, and all portions thereof, shall be subject to the easements as shown on any existing or subsequently recorded Condominium Map of the Real Estate, or any portion thereof. Further, the Real Estate, or portions thereof is now or may hereafter be subject to the easements, licenses and other recorded documents, or any of them, set forth on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 2: Encroachments. In the event that any portion of the Common Elements encroaches upon any Unit or in the event that any portion of a Unit encroaches upon any other Unit or upon any portion of the Common Elements, or in the event any encroachment shall occur in the future as a result of: (i) settling of a Building; (ii) alteration or repair to the Common Elements and any improvements thereof; or (iii) repair or restoration of one (1) or more Buildings and/or Unit(s) after damage by fire or other casualty, or condemnation of eminent domain proceedings, then, in any of said events, a valid easement shall exist for the encroachment and for the maintenance of the same so long as the encroachment exists. In the event that any one (1) or more of the Units, Buildings or other improvements comprising part of the Common Elements are partially or totally

destroyed and are subsequently rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding or reconstruction, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall then exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes. In interpreting any and all provisions of this Declaration, subsequent deeds, mortgages, deeds of trust or other Security Interests relating to Units, the actual location of a Unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations, either horizontally, vertically or laterally, from the location of such Unit as indicated on the Condominium Map.

Section 3: Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergencies agencies or persons to enter upon all Common Elements in the proper performance of their duties.

Section 4: Access and Utility Easements. There is hereby created a blanket easement upon, across, over, and under the Common Elements for ingress and egress to and from each Unit and for utilities and the installation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, gas, telephone, electricity, and master television antenna or cable systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, and appurtenances on the Common Elements and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, cables, circuits, conduits and metres. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, the Association shall have the right and authority to grant such easements upon, across, over or under any part or all of the Common Elements without conflicting with the terms hereof. The easement provided for in this Section 4 shall in no way affect, void, extinguish or modify any other recorded easement(s) on the Common Elements.

Section 5: Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Elements and a right to make such use of the Common Elements as may be necessary or appropriate to perform pursuant to this Declaration, including the right to construct and maintain on the Common Elements, maintenance and storage facilities for use by the Association.

Section 6: Drainage Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns to enter upon, across, over, in and under any portion of the Common Elements for the purpose of changing, correcting or otherwise

modifying the grade or drainage channels of the Real Estate so as to improve the drainage of water on the Real Estate. The Association shall maintain the drainage system to permit free flow.

Section 7: Easements of Access or Repair, Maintenance and Emergencies. Some of the Common Elements are or may be located within individual Units or may be conveniently accessible only through individual Units. The Owners of other individual Units shall have the irrevocable right, to be exercised by the Association as their agent, to have access to each individual Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair, removal or replacement of any of the Common Elements located therein or accessible therefrom, or for making emergency repairs therein, necessary to prevent damage to the Common Elements or to any individual Unit. The Association shall also have such right, independent of any agency relationship. Damage to the interior of any part of a Unit resulting from maintenance, repair, emergency repair, removal or replacement of any of the Common Elements or as a result of emergency repairs within any individual Unit at the instance of the Association or any Owner, shall be an expense of all the Owners. Non-emergency repairs shall be made only during regular business hours on business days after twenty-four (24) hours' notice to the occupants of the individual Unit wherein such repairs are to be made, except where the occupants have no objections to earlier entry for repairs. In emergency situations, the occupants of the affected individual Unit shall be warned of impending entry as early as is reasonably possible.

Section 8: Easements Deemed Created. All conveyances of Units hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article XIII, even though no specific reference to such easements or this Article XIII appears in the instrument for such conveyance.

#### **ARTICLE XIV. RESTRICTIONS ON USE AND OCCUPANCY**

Section 1: Use and Occupancy Restrictions. Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to Units and to the Common Elements:

(a) Residential Use. Units R1 through R9 shall be occupied and used for single-family, Residential Use by the Owner of the Unit, his family, and their guests or tenants. There may be assisted living provided to the residents of a Unit. Fifty percent (50%) of the Unit Owners purchasing directly from the Declarant must occupy the Unit. After the sale of a Unit by the Unit Owner purchasing directly from the Declarant, there shall be no restriction against tenant occupancy.

(b) Business Uses in Residential Units. The Owner or a tenant may conduct business activity within their respective Residential Units, Units R1 through R9 and the Hattie House, as long as:

- (1) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (2) The business activity complies with all zoning requirements of the City of Fort Collins Land Use Code for single family residences;
- (3) No employees or other persons (except for the Owner, members of the Owner's immediate family, and the tenant as referenced above) work for the business at the Unit;
- (4) The business activity does not involve regular visits to the Unit by clients, customers, suppliers, or other business invitees, and does not involve door-to-door solicitation of other residents of the Common Interest Mixed Community;
- (5) The business activity does not involve processing, storing or shipping significant quantities of materials to or from the Unit; and
- (6) The business activity is consistent with the residential character of the residential units in the Common Interest Mixed Community, does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other Unit Owners, as may be determined in the sole discretion of the Executive Board.

The terms "business" and "trade," as used herein, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis involving the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

(c) Commercial Use. Units C1 through C5 may be used for all commercial and business uses permitted by the City of Fort Collins Land Use Code, as the Code may be amended from time to time and as further limited in Article II, DEFINITIONS, Section 1, E. Commercial Use.

(d) Animals. The Owner of each Unit may keep a small dog, cat, and other household pet, provided the pet is kept inside the Unit and/or the Limited Common Area exclusively for that Unit. All pets, when outside the Unit, including on terraces/balconies, must be attended. The pet shall not cause a nuisance nor shall it cause any damage to the Common Elements, and all fecal droppings must be cleaned up by the Owner. Visitors, guests, renters, or other occupants shall be allowed to keep a pet the same as the Owner. All pets, while in the Common Area, shall be attended by the Owner. The Executive Board shall have the power to adopt from time to time rules and regulations for the governance of household pets, including size, noise level, control and such other areas of animal care required to ensure that the pet is not a nuisance.

(e) Exterior Structures Other Than Antennas. No exterior storage shed or similar structure of any sort shall be placed, allowed, or maintained upon any portion of the Common Interest Mixed Community.

(f) Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, by example and not limitation, satellite dishes, shall be erected, used, or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Executive Board.

In the consideration and approval process of the Executive Board concerning antennas, the Executive Board shall be guided by the Federal Communication Commission ("FCC") rules on satellite dishes and antennas. There shall be no covenant, rule, or similar restriction on property owned or within the exclusive use or control of the antenna user that impairs the installation, maintenance, or use of (1) an antenna designed to receive DBS that is one meter or less in diameter, (2) an antenna designed to receive video programming services via multi-point distribution services, including MMDS that is one meter or less in diameter or diagonal measurement, or (3) an antenna designed to receive television broadcast signals TVBS, is prohibited subject to either of the following two exceptions: (a) the restriction is necessary to accomplish a clearly defined safety objective that is readily available to antenna users and would be applied to the extent practicable in a nondiscriminatory manner to other appurtenances, devices or fixtures that are comparable in size, weight, and appearance and the restriction is no more

burdensome to affected antenna users than is necessary to achieve the above objectives, or (b) the restriction is necessary to preserve an historic district listed or eligible for listing in the National Register of Historic Places and imposes no greater restrictions on antennas than are imposed on the installation, maintenance or use of other modern appurtenances, devices or fixtures that are comparable in size, weight, and appearance and is no more burdensome to affected antenna users than is necessary to achieve the objectives described above.

A regulation or restriction impairs installation, maintenance or use of an antenna if it:

- (1) unreasonably delays or prevents installation, maintenance or use, or
- (2) unreasonably increases the cost of installation, maintenance, or use, or
- (3) precludes (prevents or makes impossible) reception of an acceptable quality signal.

No legal action of any kind shall be taken to enforce any restriction or regulation prohibited by FCC rule, except as follows:

- (1) Associations may apply to the FCC for a waiver of the rule. The Association must show a local concern of a highly specialized or unusual nature to justify a waiver.
- (2) Associations or antenna users may petition the FCC or a local court (e.g., county or district court) to determine if a particular restriction is permissible or prohibited under this rule. The burden of proof to show that the restriction complies with the rule and does not impair installation, maintenance or use is on the Association.

If an Association has requested a determination from a court or the FCC on whether the restriction at issue is permitted as an exception for safety or historic preservation, the restriction may be enforced until a ruling is issued that the restriction is not preempted by the FCC rule. The FCC rule is adopted by this Declaration as the same may be amended from time to time.

(g) Vehicular Parking, Storage, and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than one tone, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within the Common Interest Mixed Community for a period of more than twenty-four (24) hours except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles." No emergency or temporary parking or storage shall continue for more than seventy-two (72) hours.

Automobile and/or truck parking will be subject to regulations and restrictions by the Executive Board.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within the Common Interest Mixed Community except in emergencies. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one (1) week or longer, or which does not have installed within it an operable propulsion system; provided, however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. The Executive Board shall have the right to remove and store a vehicle in violation of this paragraph, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment.

Only preventive vehicle maintenance shall be allowed within the Common Interest Mixed Community.

(h) Signs and Advertising. All signs and advertising shall comply with all requirements of the City of Fort Collins Land Use Code.

(i) Nuisance. No Unit or any part of the Common Interest Mixed Community shall be used in any way or for any purpose which may endanger the health, safety, or welfare of any Owner or occupant of a Unit or which may unreasonably disturb the other Owners or occupants of Units or which may constitute a nuisance. In giving consideration of what might constitute a nuisance, consideration must be given to the mixed use of the Common Interest Mixed Community as both commercial and residential.



(j) No Unsightliness. No activity shall be conducted on any part of the Common Interest Mixed Community which is or might be unsafe, unsightly, unhealthy, or hazardous to any person. Without limiting the generality of the foregoing, nothing shall be kept or stored on or in the Common Elements, including areas which are Limited Common Elements; and nothing shall be placed on or in windows or doors of Units, which would or might create an unsightly appearance. Except, the commercial units C1 through C5 may have outside seating, displays, signs, and promotions of the Units' businesses. The Executive Board may adopt reasonable regulations and rules.

Patios and balconies may be used for storage of bicycles. No activity shall be conducted on any part of the Common Interest Mixed Community that is or might be unsafe or hazardous to any person. All rubbish, trash or garbage shall be regularly removed from the Common Interest Mixed Community and shall not be allowed to accumulate thereon. Awnings and patio covers are not allowed.

(k) Prohibition of Certain Activities. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Common Interest Mixed Community or increase the rate of the insurance on the Common Interest Mixed Community over what the Association, but for such activity, would pay, without the prior written consent of the Executive Board. Hazardous material of any nature shall not be allowed within the Common Interest Mixed Community.

Nothing shall be done or kept in any Unit or in the Common Elements which would be in violation of any statute, ordinance, regulations, or other validly imposed requirement of any governmental body. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein which may be or may become an annoyance or nuisance to others. No sound or vibration shall be emitted on any part of the Common Interest Mixed Community which is unreasonably loud or annoying.

(l) Damage to Unit. All damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, at the instance of the Association, shall be paid for as part of the Common Expense Assessment by all of the Owners. No diminution or abatement for Common Expense Assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of any governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to damage.

Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs of repairing such damage. In the event the Owner fails, within a reasonable time upon proper notice, to pay the cost of the damages incurred, the Executive Board may pay for said damages and charge the Owner responsible as an Individual Assessment.

(m) Garage Units. Garage Units shall not be used to house or keep any living animal, fish or reptile. Garage Units shall be used only to park vehicles in an operating condition and for general storage. There shall not be storage or other obstructions that will prohibit the parking of a vehicle (car or truck) in the Garage Unit. No hazardous materials shall be stored in a Garage Unit. A Garage Unit shall not be used as a workshop or repair shop (tools may be kept in a Garage Unit for limited repair and maintenance use). The intent of a Garage Unit is for vehicle parking and not for a workshop. The Executive Board may adopt rules from time to time to regulate and enforce the use of Garage Units.

(n) Ownership of Garage Unit. The owner of a Garage Unit must also be a Residential Unit Owner, and, except for the Declarant, no Unit Owner shall own at any time more than one (1) Garage Unit. The Declarant does not have to be a Unit Owner to own one (1) or more Garage Units. For a period of twenty (20) years from the date that this Declaration is recorded in the records of the Clerk and Recorder of Larimer County, the Declarant shall have a first right of refusal to purchase any Garage Unit sold separate from the Unit. The first right of refusal to purchase the Garage Unit shall be good for ninety (90) days from the date that the Declarant has notice of the sale or intended sale at the price the Garage Unit is being sold for.

(o) Rules and Regulations. The Association, through the Executive Board, may adopt reasonable rules and regulations not inconsistent with this Declaration governing the use of the Common Elements.

Section 2: Restrictions on Alienation. A Unit may not be conveyed pursuant to a time sharing arrangement. A Unit may not be leased or rented for a term of less than thirty (30) days without prior written approval of the Executive Board. All leases and rental agreements shall be in writing and subject to reasonable requirements of the Executive Board.

## ARTICLE XV. GENERAL PROVISIONS

### Section 1: Dispute Resolution.

(a) Enforcement. Enforcement of this Declaration shall be by binding arbitration conducted as provided in the Colorado Uniform Arbitration Act against those persons or entities violating or attempting to violate any covenant, condition, or restriction herein contained. Such proceeding shall be for the purpose of removing a violation, restraining a future violation, for recovery of damages for any violation, or for such other and further relief as may be available. Such proceedings may be prosecuted by an Owner or by the Association. In the event it becomes necessary to commence an action to enforce this Declaration, the arbitration shall be commenced within a reasonable period of time and the arbitrator shall award to the prevailing party in such proceeding, in addition to such damages as the arbitrator may deem just and proper, an amount equal to the costs and reasonable attorney's fees incurred by the prevailing party in connection with such proceeding. The failure to enforce or to cause the abatement of any violation of this Declaration shall not preclude or prevent the enforcement thereof or of a further or continued violation, whether such violation shall be of the same or of a different provision of this Declaration.

(b) Claim in Tort or Contract. Any claim brought by an Owner, occupant of a Unit or guest in tort or contract against any Owner, the guest or tenant of any Owner, the Association or the Declarant shall be resolved by arbitration conducted as provided in the Colorado Uniform Arbitration Act. Entry on and/or ownership of a part of the Common Interest Mixed Community constitutes consent to this provision.

(c) Class Action. All Owner(s), tenants of Owner(s), Member(s) of the Association, and guests by their purchase and/or occupancy of a Unit or a part of the Common Interest Mixed Community waive their right and agree that they shall not be a party to any class action that may be claimed to have arisen because of the construction, materials or workmanship of the Common Elements, or because of any alleged tort on the premises of the Common Interest Mixed Community or contract, including, but not limited to, any claim against a person or company that is insured or is providing insurance as set forth in Section 5 of this Article, and/or any coverage contracted by a Unit Owner or tenant of a Unit for their protection and the protection of their guest and/or property.

Section 2: Duration. This Declaration shall run with the land, shall be binding upon all persons owning Units and any persons hereafter acquiring said Units, and shall be in effect in perpetuity unless amended or terminated as provided in the Act.

Section 3: Amendment. Except as otherwise provided in this Declaration, this Declaration may be altered or amended at any time by a vote of sixty-seven percent (67%) or more of the votes entitled to be cast by all Unit Owners through a duly written and recorded instrument. Except, the Declarant reserves the right to make changes during Declarant control to comply with requirements of HUD, FannieMae (FNMA), FreddieMac (FHLMC), VA or FHA.

Section 4: Insurance.

(a) Insurance for Fire and Other Perils. The Association shall obtain, maintain, and pay the premiums upon, as a Common Expense, a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements, (except land, foundation, excavation and other items normally excluded from coverage) including fixtures, to the extent that they are part of the Common Elements of the condominium, building service equipment and supplies, and other common personal property belonging to the Association. All references herein to a "master" or "blanket" type policy of property insurance, are intended to denote single entity condominium insurance coverage. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the common elements) must be covered in such "blanket" or "master" policy.

The policy shall be consistent with state and local insurance laws and equal to such coverage as is commonly required by prudent institutional mortgage investors in Larimer County, Colorado. The policy shall be in an amount equal to 100% of current replacement cost of the condominium exclusive of land, foundation, excavation and other items normally excluded from coverage.

The name of the insured under such policies must be set forth therein as Cherry Street Lofts Condominium Association, or any successor association of the Owners.

The policies may also be issued in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor Trustee, as insured, for the use and benefit of the individual owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee, for each Unit Owner and each such Owner's Eligible Mortgagee. The Association or insurance trustee, if any, must be required to hold any proceeds of insurance in trust for Owners and their first

mortgage holders, as their interests may appear. Each Owner and each Owner's Eligible Mortgagee, if any, shall be beneficiaries of the policy in the percentage of ownership in the Common Elements. Certificates of insurance shall be issued to each Owner and Eligible Mortgagee upon request.

Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in Larimer County, Colorado and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on Units. Such policies must also provide that they may not be cancelled or substantially modified, without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled Eligible Mortgagee in the policies.

Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or (ii) by the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

The policies must also provide for the following: recognition of any Insurance Trust Agreement; a waiver of the right of subrogation against Owners individually; that the insurance is not prejudiced by any act or neglect of individual Owners which is not in control of such owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss. The requirements stated in this paragraph are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

The insurance policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and
- (2) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available. In addition, to meet FNMA requirements the

policies include an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement."

FHLMC requires the forgoing endorsements only if they are available and are commonly required by prudent institutional mortgage investors in the area in which the condominium is located.

(b) Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Elements. Coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association. The policies shall provide that they may not be cancelled or substantially modified, by any party, without at least ten (10) days prior written notice to the Association and to each Eligible Mortgagee on any Unit that is listed on a schedule of Eligible Mortgagee(s) in the insurance policy. FNMA and FHLMC may also require such coverage to include protection against such other risks as are customarily covered with respect to condominiums similar in construction, location and size including, but not limited to, host liquor liability, employers liability insurance, contractual and all-written contract insurance, and comprehensive automobile insurance liability insurance.

(c) Flood Insurance. FNMA and FHLMC will not purchase any mortgage secured by a condominium property located in an area which has been identified by the Secretary of Housing and Urban Development as having special flood hazards (by publication in the Federal Register of a Flood Insurance Boundary Map or Insurance Rate Map) for which flood insurance is not available because the community in which the condominium is located is ineligible for participation in the National Flood Insurance Program, except for any mortgage which was closed prior to July 1, 1975 or is closed within one year following the publication of the Flood Hazard Boundary Map, whichever is later.

Where the condominium is located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the

Association must obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the Common Elements, in an amount deemed appropriate by the Association, but not less than the following:

The lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the Common Elements to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current "replacement cost" of all such buildings and other insurable property within such area.

Such policy shall be in a form that meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(d) Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, and any employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association. Where the management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bonds shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association or Insurance Trustee. The Federal National Mortgage Association also requires, as a condition to approval of the condominium projects, that such bonds provide that FNMA Servicer, on behalf of FNMA, also receive such notice of cancellation or modification.

(e) Insurance Trustees; Power of Attorney. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Each Owner appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

(f) Qualifications of Insurance Carriers. FNMA and FHLMC reserve the right to set standards and qualifications for insurance carriers. The Association shall use generally acceptable insurance carriers. Reference is made to the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Seller's Guide for specific requirements regarding the qualifications of carriers.

Section 5: Condemnation and Total or Partial Loss or Destruction. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or parts thereof, by the condemning authority. Each Owner by acceptance of a deed appoints the Association as attorney-in-fact for such purpose.

The Association may appoint a Trustee to act on behalf of the Owners, in carrying out the above functions, in lieu of the Association.

In the event of a taking or acquisition of part or all of the Common Elements by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any Trustee, to be held in trust for Unit Owners and their Eligible Mortgagee as their interests may appear to the extent not herein otherwise provided the Act shall govern.



Section 6: Open Flame and Outdoor Cooking. The insurer of the Units may have special requirements for open flames and outdoor cooking, and in such case the Board of Directors may adopt such rules as shall be required to meet the requirements for insurance coverage of the Units with special premium rates.

Section 7: Notice Concerning Utility Service. Notice is hereby given that water and sanitary sewer service is provided through a single master tap on the City utility. Failure to pay the entire bill for utility service through such tap will result in service being disconnected to all individual units served and enforcement of the lien provided for in the ordinances of the City of Fort Collins against all such individual units. Dissolution of the entity responsible for bill payment will make mandatory the installation, at owner's expense, of individual water and sewer taps to each living unit.

Section 8: Construction Hours. Notice is given that construction shall be conducted on the Real Estate between the hours of 7 a.m. and 7 p.m. and that such construction will use heavy equipment and other construction methods that will be dusty and noisy.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

CAMBIUM DEVELOPMENT, INC., a Colorado corporation

By [Signature]  
 Gregory Glebe, President

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF LARIMER )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 4<sup>th</sup> day of April, 2006, by Gregory Glebe, president of Cambium Development, Inc., a Colorado corporation.

Witness my hand and official seal.  
 My commission expires: June 17, 2009.



[Signature]  
 Notary Public

**RATIFICATION**

The undersigned, having as security interest in all or any part of the Real Estate described on Exhibit "A" attached hereto and incorporated herein by reference, hereby approves, ratifies, confirms, and consents to the foregoing Condominium Declaration for Cherry Street Lofts Condominiums.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto described by its Vice President this 4<sup>th</sup> day of April, 2006.

FIRST COMMUNITY BANK, a Branch  
of First Community Bank of N.M.

Date: April 4, 2006

By JB Barthloma  
Vice President

STATE OF COLORADO )  
                                   ) ss.  
COUNTY OF LARIMER )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of April, 2006, by JB Barthloma, as Vice President of First Community Bank, a Branch of First Community Bank of N.M.



Amber Wilson  
Notary Public  
My commission expires: June 17, 2009

## EXHIBIT "A"

### LEGAL DESCRIPTION

#### Parcel I:

Beginning at the Northeast corner of Lot 9, Block 43, City of Fort Collins, according to Plat recorded January 18, 1973, thence South 90 feet, thence West 40 feet, thence North 90 feet, and thence East 40 feet.

#### Parcel II:

The West One Hundred Fifty feet (150') of Lot 9, Block 43, City of Fort Collins, County of Larimer, State of Colorado.

## EXHIBIT "C"

Terms and conditions of the Master Street Plan, plat and resolution of the City of Fort Collins, building resolutions, zoning resolutions, and subdivision resolutions of the County of Larimer, State of Colorado.

The Fort Collins, Colorado Downtown Development Agreement recorded May 27, 2005, at Reception No. 2005-0043231, a copy of which is attached hereto and incorporated herein by reference.