

DECLARATION

FOR

PRIME LOFTS

PRIME LOFTS

TABLE OF CONTENTS

ARTICLE 1	
DECLARATION AND SUBMISSION	1
1.1. Submission of Property	1
1.2. Covenants Running with the Real Estate	1
1.3. Binding Upon and Inure to the Successors	1
ARTICLE 2	
DEFINITIONS	1
ARTICLE 3	
MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS	4
3.1. The Association	4
3.2. Transfer of Membership	4
3.3. Classes of Membership and Voting Rights	4
3.4. Allocation of Interests	5
3.5. Authority of the Association	5
3.6. Managing Agent	5
3.7. Indemnification	5
3.8. Implied Rights and Obligations	5
3.9. Education and Training	6
3.10. Association Ownership of Common Elements	6
3.11. Period of Declarant’s Control	6
3.12. Compliance with Governing Documents	6
ARTICLE 4	
UNIT AND BOUNDARY DESCRIPTIONS	6
4.1. Maximum Number of Units	6
4.2. Description of a Unit	6
4.3. Boundaries	7
4.4. Inconsistency with Map	7
4.5. Additions, Alterations, and Improvements By Unit Owners	7
4.6. Common Element Changes By Executive Board	8
4.7. Association Approval of LCE Improvements	8
4.8. Application and Amendment of Boundaries	9
4.9. Recording Amendments	9
ARTICLE 5	
LIMITED COMMON ELEMENTS	9
5.1. Limited Common Element Improvements	9
5.2. Reallocation	9
ARTICLE 6	
MAINTENANCE OF THE PROPERTY	10
6.1. Common Elements	10
6.2. Individual Units	10
6.3. Limited Common Elements	10
6.4. Garage	10
6.5. Right of Access	10
6.6. Repairs Resulting From Negligence	10

ARTICLE 7

ASSESSMENTS..... 10

- 7.1. Obligation 10
- 7.2. Purpose of Assessments 11
- 7.3. Budget..... 11
- 7.4. Working Capital Account 11
- 7.5. Periodic Assessments..... 11
- 7.6. Apportionment of Periodic Assessments 11
- 7.7. Supplementary Assessments 11
- 7.8. Individual Purpose Assessments..... 12
- 7.9. Default Assessments 12
- 7.10. Effect of Nonpayment; Assessment Lien 12
- 7.11. Personal Obligation..... 13
- 7.12. Successor’s Liability for Assessment 13
- 7.13. Subordination of Lien 13
- 7.14. Notice to Mortgagee 14
- 7.15. Statement of Status of Assessment Payment 14

ARTICLE 8

SPECIAL DECLARANT RIGHTS 14

- 8.1. Special Declarant Rights..... 14
- 8.2. Models, Sales Offices, and Management Offices 14
- 8.3. Construction; Declarant’s Easement..... 14
- 8.4. Signs and Marketing 14
- 8.5. Declarant’s Property 15
- 8.6. Declarant Control of the Association..... 15
- 8.7. Limitations on Special Declarant Rights 15
- 8.8. Interference with Special Declarant Rights 15
- 8.9. Exclusive Rights to Use Name of Development..... 15

ARTICLE 9

INITIAL PROTECTIVE COVENANTS 15

- 9.1. Plan of Development; Applicability; Effect 15
- 9.2. Owners Acknowledgment..... 15
- 9.3. Rights of Owners 16
- 9.4. Initial Use Restrictions..... 16
- 9.5. Restrictions on Ownership and Leasing of Units..... 19

ARTICLE 10

EASEMENTS AND LICENSES..... 20

- 10.1. Owner’s Easement of Enjoyment 20
- 10.2. Recorded Easements 20
- 10.3. Easement for Ingress and Egress 20
- 10.4. Utility Easements 20
- 10.5. Easements for Encroachments 20

ARTICLE 11

INSURANCE..... 21

- 11.1. Insurance Required to be Obtained by the Association 21
- 11.2. Casualty Insurance for Improvements 21
- 11.3. Adjustments 21
- 11.4. Fidelity Insurance 21
- 11.5. Deductibles 21

ARTICLE 12	
DAMAGE OR DESTRUCTION	22
12.1. Casualty to Common Elements.....	22
12.2. Casualty to a Unit	22
12.3. Decision Not to Rebuild Common Elements.....	22
12.4. Termination.....	22
ARTICLE 13	
SECURITY INTERESTS AND ELIGIBLE MORTGAGEES	22
13.1. Title Taken by Lenders	22
13.2. Distribution of Insurance or Condemnation Proceeds	22
13.3. Right to Pay Taxes and Charges	23
13.4. Financial Statement.....	23
13.5. Notice of Action.....	23
13.6. Amendment of Governing Documents	23
13.7. Inaction by Lenders or Agency.....	23
ARTICLE 14	
DURATION OF COVENANTS AND AMENDMENT.....	23
14.1. Covenants Binding.....	23
14.2. Amendment.....	24
14.3. When Modifications Permitted	24
14.4. Revocation	24
14.5. Special Declarant Rights.....	24
ARTICLE 15	
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION	24
15.1. Agreement to Encourage Resolution of Disputes Without Litigation	24
15.2. Dispute Resolution Procedures	25
15.3. Construction Defect Action	27
15.4. Initiation of Litigation by Association.....	28
15.5. Compliance and Enforcement.....	29
ARTICLE 16	
MISCELLANEOUS PROVISIONS.....	30
16.1. Captions	30
16.2. Gender.....	31
16.3. Waiver.....	31
16.4. Invalidity.....	31
16.5. Conflict	31
EXHIBIT A DESCRIPTION OF PROPERTY	32
EXHIBIT B ALLOCATED INTERESTS	32

DECLARATION FOR PRIME LOFTS

THIS DECLARATION FOR PRIME LOFTS is made by 20EMAIN, LLC, a Colorado limited liability company (“Declarant”).

RECITALS

A. Declarant owns the real property in Summit County, Colorado described in Exhibit A (the “Property”), upon which Declarant establishes Prime Lofts, a planned community (the “Community” or “Project”) as defined by the Colorado Common Interest Ownership Act (the “Act” or “CCIOA”).

B. Declarant has caused Prime Lofts Owners Association, a Colorado nonprofit corporation (the “Association”), to be incorporated under the laws of the State of Colorado as a common interest community owners association to govern and operate the Community as provided in this Declaration.

C. This Declaration is executed (i) in furtherance of a common and general plan for the development of the Community; (ii) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Community; (iii) to further a plan for the improvement, sale, and ownership of the Units to the end that a harmonious and attractive development of the Property may be accomplished, and the health, comfort, safety, convenience, and general welfare of Declarant and the Owners may be promoted and safeguarded; (iv) to set forth the responsibilities and authority of the Association to govern and manage the Community; (v) to define certain duties, powers, and rights of the Owners; and (vi) to define certain duties, powers, and rights of Declarant.

ARTICLE 1 DECLARATION AND SUBMISSION

1.1. Submission of Property. All of the Property shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions included in this Declaration. The Declarant has elected to exempt the Project from the provisions of the Act pursuant to C.R.S. §§ 38-33.3-116(2) as a planned community with less than twenty units. However, certain provisions of the Act will also apply to the Community as set forth in this Declaration.

1.2. Covenants Running with the Real Estate. The benefits, burdens, and all other provisions contained in this Declaration shall be covenants running with and binding upon the Property.

1.3. Binding Upon and Inure to the Successors. The benefits, burdens, and all other provisions contained in this Declaration shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assignees. Any right or any interest reserved or contained in this Declaration to or for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more of such rights or interests, to any person, corporation, partnership, association, or other entity, in accordance with the provisions of the Act.

ARTICLE 2 DEFINITIONS

2.1. Act. The Act is the Colorado Common Interest Ownership Act, C.R.S., §§ 38-33.3-101 *et seq.*, as it may be amended from time to time.

2.2. Agency. Agency means and collectively refers to, the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Department of Veterans Affairs (VA), the Colorado Housing and Finance Authority (CHFA) or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by any of such entities.

2.3. Allocated Interests. The Allocated Interests are the Common Expense liability, and votes in the Association, allocated to Units in the Common Interest Community. The Allocated Interests are described in § 3.4 and Exhibit B of this Declaration.

2.4. Assessment. Assessment shall include all Common Expense Assessments, Residential Common Expenses, and Commercial Common Expenses and any other expense levied to a Unit pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

2.5. Association. The Association is Prime Lofts Owners Association, a Colorado nonprofit corporation and is designated as the Association of Unit Owners pursuant to C.R.S., § 38-33.3-301.

2.6. Bylaws. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.

2.7. Commercial Unit. Commercial Unit means the Unit designated for commercial use on the Map, to be owned in fee simple interest, as further set forth in this Declaration.

2.8. Commercial Expenses. Commercial Expenses shall mean expenditures made or liabilities incurred by or on behalf of the Association with respect to the Commercial Unit and the Commercial Limited Common Elements appurtenant to the Commercial Unit, together with any allocations to reserves. Commercial Expenses shall be assessed in accordance with the Declaration and shall be approved in a budget adopted by the Commercial Owners.

2.9. Commercial Limited Common Element. Commercial Limited Common Elements or “CLCE” shall mean those portions of the Common Elements appurtenant to the Commercial Unit only, as set forth on the Map and as may be defined herein.

2.10. Common Elements. The Common Elements (“CE”) are each portion of the Common Interest Community other than a Unit. Common Elements include the Limited Common Elements, Commercial Limited Common Elements and Residential Limited Common Elements. The Common Elements are owned by the Association.

2.11. Common Expenses. The Common Expenses are the expenses or financial liabilities for the operation of the Common Interest Community . Common Expense Assessments are the funds required to be paid by each Unit Owner in payment of such Owner’s Common Expense liability. These expenses include:

- A. expenses of administration, maintenance, construction, improvement, repair, or replacement of the Common Elements;
- B. expenses declared to be Common Expenses by the Governing Documents or by the Act;
- C. expenses agreed upon as Common Expenses by the Association; and

D. reasonable reserves established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.

In addition, the costs and expenses imposed on the Association, benefiting fewer than all the Units, shall be a Common Expense but, except as otherwise stated herein, assessed exclusively against those Units benefited.

2.12. Community. The Community is the Property and all Improvements subject to this Declaration.

2.13. Declarant. The Declarant is 20EMAIN, LLC, a Colorado limited liability company .

2.14. Declaration. The Declaration is this document, including the Map and any amendments.

2.15. Director. A Director is a member of the Executive Board.

2.16. Eligible Mortgagee. An Eligible Mortgagee is a holder of a first security interest in a Unit (a “First Mortgage”) that has submitted a written request to the Association for notification of actions as provided in Article 13.

2.17. Executive Board. The Executive Board, or Board, manages the business affairs and exercises all powers and duties of the Association in conformance with this Declaration and the Act.

2.18. Governing Documents. The Governing Documents are this Declaration and the Map and the Articles of Incorporation, the Bylaws, and the Rules of the Association as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Governing Document is a part of that document.

2.19. Guest. Guest means (a) any person who resides with an Owner within the Community; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Unit within the Community, and any members of the household, invitee or cohabitant of any such person; (d) a contract purchaser; or (e) an employee, customer or client of an Owner or tenant.

2.20. Improvements. Improvements are any structure, equipment, fixture, or facilities existing, or to be constructed on, the Property, including, but not limited to, buildings, landscaping, paving, utility wires, pipes, and light poles.

2.21. Limited Common Elements. The Limited Common Elements are the portion of the Common Elements allocated for the exclusive use of one or more, but fewer than all, of the Residential or Commercial Unit by the Declaration, the Map, or by operation of C.R.S., §§ 38-33.3-202(1)(b) and (1)(d). The Limited Common Elements in the Community are described in Article 5 of this Declaration.

2.22. Managing Agent. A Managing Agent is a person employed or engaged to perform management services for the Community and the Association.

2.23. Map. Map means the Condominium Map of Prime Lofts, which is that part of this Declaration that is a land survey plat and depicts the Community in three dimensions and is recorded in the Summit County records, as it may be amended from time to time.

2.24. Member. “Member” means any Owner as a participant in the Association, or a Director on the Executive Board, as the context requires.

2.25. Property. Property is the land and all Improvements, easements, rights, and appurtenances that have been submitted to this Declaration, as described in Exhibit A.

2.26. Residential Expenses. Residential Expenses shall mean expenditures made or liabilities incurred by or on behalf of the Association with respect to the Residential Units and the Residential Limited Common Elements appurtenant to Residential Units, as set forth on the Map or as may be defined herein.

2.27. Residential Limited Common Elements. Residential Limited Common Elements or “RLCE” shall mean those portions of the Common Elements appurtenant only to Residential Units, as set forth on the Map or as may be defined herein.

2.28. Residential Owner. Residential Owner shall mean any Owner of a Residential Unit.

2.29. Rules. The Rules are the regulations for the use of Common Elements and for the conduct of persons within the Community, as may be adopted by the Executive Board from time to time pursuant to this Declaration.

2.30. Special Declarant Rights. Special Declarant Rights are the rights reserved for the benefit of the Declarant under Article 8 of this Declaration.

2.31. Unit. A Unit is a physical portion of the Common Interest Community designated for separate occupancy and fee simple ownership, the boundaries of which are described on the Map and in §4.3 of this Declaration.

2.32. Unit Owner or Owner. The Unit Owner or Owner is the Declarant or any other Person who owns a Unit. Unit Owner does not include a Person having only a Security Interest or any other interest in a Unit solely as security for an obligation. The Declarant is the initial owner of each Unit created and defined by this Declaration and the Map.

ARTICLE 3

MEMBERSHIP & VOTING RIGHTS; ASSOCIATION OPERATIONS

3.1. The Association. Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

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

3.3. Classes of Membership and Voting Rights. Every person who is an Owner shall be a Member of the Association and membership shall be appurtenant to and may not be separated from ownership of a Unit. The Association shall have 2 classes of membership in the Association, one for Residential Owners and one for Commercial Owners. As further set forth in the Bylaws, after termination of Declarant’s right to appoint Directors, two Directors on the Executive Board will be nominated and elected by the Residential Owners and one Director will be appointed by the Commercial Owner.

Members shall be entitled to vote in Association matters pursuant to this Declaration, the Act and the Bylaws. Voting shall be by class on any matters affecting exclusively the Residential Units and Residential Limited Common Elements or affecting the Commercial Unit and Commercial Limited Common Elements. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. The vote allocated to the Unit

shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

3.4. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit B. These interests have been allocated in accordance with the formulas set out in this Article. The share of liability for Common Expenses allocated to each Unit has been determined by dividing square feet as in each Unit as shown on the Map by the total number square feet in all Units, and in accordance with the Assessment percentages set forth in Exhibit B. The share of liability for Residential Common Expenses allocated to each Residential Unit has been determined by dividing square feet in each Residential Unit as shown on the Map by the total number square feet in all Residential Units, and in accordance with the Assessment percentages set forth in Exhibit B. The share of Commercial Common Expenses allocated to the Commercial Unit has been determined by dividing square feet in each Unit as shown on the Map by the total number square feet in all Residential Units, and in accordance with the Assessment percentages set forth in Exhibit B. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units as provided in §7.6 and in other provisions of this Declaration.

B. Votes. Each Residential Unit and each Commercial Unit shall have one vote in the affairs of the Association.

3.5. Authority of the Association. The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Map, its Articles of Incorporation and Bylaws, and any Rules adopted by the Executive Board. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Executive Board, and the business and affairs of the Association shall be managed under the direction of the Executive Board. The Executive Board may, by written resolution, delegate authority to a manager or managing agent for the Association, provided no such delegation shall relieve the Executive Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

3.6. Managing Agent. The Association may employ or contract for the services of a Managing Agent to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. Any agreement for management of the Community shall be in writing having a term of not more than three years and be subject to cancellation by the Executive Board, with or without cause on 30 days' notice without any fee. The Executive Board shall not be liable for any omission or improper exercise by a Managing Agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

3.7. Indemnification. To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Executive Board shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or other volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or other volunteer appointed by the Executive Board at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and Colorado law.

3.8. Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Governing Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Governing Documents,

and every other duty or obligation implied by the express provisions of the Governing Documents or necessary to reasonably satisfy any such duty or obligation.

3.9. Education and Training. As a Common Expense, the Association will provide education and training opportunities for Owners. The education and training activities are intended as a tool for fostering Owner awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for Directors and officers.

3.10. Association Ownership of Common Elements. In consideration for the obligations of maintenance and repair of the Association as set forth in this Declaration, the Declarant sells and conveys the Common Elements to the Association, reserving to the Declarant all Special Declarant Rights.

3.11. Period of Declarant's Control. During the period of Declarant's control, Declarant will have exclusive power to appoint and remove Directors and officers of the Association. This period of Declarant's control will terminate no later than sixty (60) days after conveyance of 100% of the Units that may be created to Owners other than Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the period of Declarant's control, but, in that event, the Declarant may require for the duration of the period of Declarant's control, that specified actions of the Association or the Executive Board, as described in a recorded instrument by the Declarant, be approved by the Declarant before they become effective.

3.12. Compliance with Governing Documents. All Unit Owners, Guests, Declarant and, to the extent they own Units, mortgagees shall comply with the Governing Documents and shall be subject to all rights and duties under these documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Unit Owner, tenant, mortgagee, or occupant. All provisions recorded in the Records are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Unit.

ARTICLE 4 UNIT AND BOUNDARY DESCRIPTIONS

4.1. Maximum Number of Units. The Community contains 9 Residential Units and one Commercial Unit.

4.2. Description of a Unit. Every deed, lease, mortgage, will, or other instrument shall legally describe a Unit by its identifying Unit number together with a reference to the Map and this Declaration, in the following form:

Unit _____, PRIME LOFTS, according to the Condominium Map, recorded _____, at Reception No. _____, and subject to the Declaration of Prime Lofts, recorded _____, at Reception No. _____, Summit County, Colorado.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise affect not only the Unit but also any appurtenant easements, the Limited Common Elements appurtenant to such Unit, and such Unit's Allocated Interest. The reference to the Map and Declaration in any instrument shall be deemed to include any and all supplements or amendments to the Map and/or Declaration, without specific reference thereto.

4.3. Boundaries. The boundaries of the Unit shall be the unfinished interior surfaces of the perimeter walls (or the demising walls, if two or more Units adjoin each other), unfinished interior surfaces of floors (or the lowermost floors of Units containing more than one level), unfinished interior surfaces of ceilings (or the uppermost ceilings of the Units containing more than one level), and, to the extent any wall constituting a boundary of the Unit is penetrated by a door or a window, then the boundary of the Unit at such door or window shall be deemed to be a continuation of the plane of the unfinished interior surface of the wall. In the case of walls, floors and ceilings that are designated as boundaries of a Unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallboard paint and finished flooring, doors and windows, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the Common Elements.

A. Inclusions. Each Unit will include the spaces and Improvements lying within the boundaries described in the paragraph above, and will also include the interior walls, spaces and the Improvements within those spaces containing any space heating, water heating, or air conditioning apparatus; electrical, telephone, television, cable, broadband, or networking receptacles, switches, wiring, pipes, ducts, or conduits; all doors and windows; smoke detectors or sprinkler systems; or light fixtures or boxes as are serving that Unit exclusively. The surface of the foregoing items will be the boundaries of that Unit, whether or not those items are contiguous to the Unit.

B. Exclusions. The following are excluded from each Unit: all chutes, pipes, flues, ducts, wires, conduits, and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units or Common Elements or both.

4.4. Inconsistency with Map. If the Unit definition in § 4.3 is inconsistent with the Map, then the Map will control. In addition, to the extent permitted by the Act, the existing physical boundaries of a Unit or the physical boundaries of a Unit that is hereafter reconstructed in substantial accord with the description contained in this Declaration will be considered the legal boundaries of the Unit (rather than the boundaries specified in the description that appears in this Declaration), even if there has been vertical or lateral movement of the building or there is a minor variance between such boundaries and those in the description in this Declaration. However, this provision will not absolve a Unit Owner from liability if such Unit Owner has failed to adhere to any plats or plans or is determined to be guilty of any willful misconduct.

4.5. Additions, Alterations, and Improvements By Unit Owners.

A. No Unit Owner may make any structural addition, alteration, or Improvement in or to the Community without the prior written consent of the Executive Board in accordance with Subsection (C) below.

B. Subject to A. above, Unit Owners:

i. may make any other Improvements or alterations to the interior of their Units that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community;

ii. may not change the appearance of the Common Elements, the exterior appearance of a Unit, or any other portion of the Community without permission of the Association; and

iii. after acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures in this partition, even if the partition is in whole or in part a Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Community. Removal of partitions or creation of apertures under this Subsection is not

an alteration of boundaries or a combination of Units. If a part of an adjoining Unit is acquired, boundaries will be relocated in accordance with § 4.8.

C. A Unit Owner may submit a written request to the Executive Board for approval of anything prohibited under (A) or (B) (ii) above. Failure to answer the request shall not constitute consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its rules. Directors representing Residential Units will have authority to approve RLCE alterations and the Director representing the Commercial Unit will have authority to approve CLCE alterations.

D. Any applications to any department or governmental authority for a permit to make any addition, alteration, or Improvement in or to any Unit shall be executed by the Association only. This execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor, or materialman on account of the addition, alteration, or Improvement or to any person because of any claim for injury to person or damage to property arising from the permit.

E. All additions, alterations, and Improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premiums of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change. The provisions of this Section shall not apply to the Declarant in the exercise of any Special Declarant Right.

F. Enforcement of Restrictions. If an Owner violates any term or condition set forth in this subsection 4.5 or in the requirements of the approval, the Executive Board, shall have the following rights and remedies:

(i) By written notice to the Owner, revoke any approval previously granted to the Owner, in which event the Owner shall, upon receipt of such notice, immediately cease any construction or alteration covered by the approvals revoked;

(ii) The Board or its designated representative may, but is not obligated to enter upon the Owner's Unit and cure such violation at the Owner's sole cost and expense and the Owner shall pay to the Association the amount of all costs and expenses incurred by the Association within 30 days after the Owner receives an Assessment thereof; and

(iii) the Board may pursue any other right or remedy available to it under this Declaration, at law or in equity.

G. Neither the Association nor any of its officers, directors, employees or agents shall be responsible or liable for any defects, errors or omissions in any plans or specifications submitted, revised or approved under this subsection 4.5, nor for any defects, errors or omissions in construction. In addition to approvals issued by the Association, Owners shall comply with laws, rules, codes, ordinances and other requirements of governmental entities.

4.6. Common Element Changes By Executive Board. The Executive Board may, subject to director approvals as provided above in subsection 4.5 C, make any additions, alterations, or Improvements to the Common Elements which, in its judgment, it deems necessary and in the best interest of the Community.

4.7. Association Approval of LCE Improvements. Unit Owners may make exterior Improvements within or as a part of Limited Common Element patios or decks, including repainting, restaining, addition of architectural detailing, changing of doors and windows, planting of gardens, installation of signs or other architectural concepts, provided the Improvements are undertaken with the

permission of the Executive Board or an architectural review committee established by the Executive Board for such purpose and as provided in the Rules. Complete plans, prepared by an architect or landscape architect, shall first be submitted and reviewed by the Executive Board or committee for consistency with Improvements originally constructed by the Declarant and consistency with the style and character of the community. It is the intent to provide for limited individualization of the appearance of the buildings while retaining the common architectural style and character. The applicant will pay for the cost of preparation of the application, the cost of professional review, if required by the reviewing entity, and all costs of permits and fees.

4.8. Application and Amendment of Boundaries. Subject to approval of any structural changes and required permits pursuant to § 4.5 and the provisions of the Act, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the Owners of the Units affected by the relocation. Any relocation of boundaries will require necessary amendments to the Declaration and Map are executed pursuant to § 4.9.

4.9. Recording Amendments. The Association and appropriate Unit Owners shall in conformance with the Act prepare and record an amendment to the Map necessary to show the altered boundaries between adjoining Units along with the Units' dimensions and identifying numbers. The applicants will pay for the costs of preparation of the amendment and its recording as well as the reasonable consultant fees incurred by the Association if the Executive Board deems it necessary to employ one or more consultants.

ARTICLE 5 **LIMITED COMMON ELEMENTS**

5.1. Limited Common Element Improvements. The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

A. The Residential Unit parking garage, parking spaces, elevator and storage areas are Residential Limited Common Elements, the use of which is limited to the Residential Units as designated on the Map.

B. The CLCE patio as depicted on the Map is allocated to the Commercial Unit.

C. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only that Unit is a Limited Common Element, allocated solely to that Unit, the use of which is limited to that Unit; but any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

D. Any shutters, awnings, window boxes, doorsteps, stoops, porches, decks, balconies, patios, and exterior doors and windows, and other fixtures designed to serve a single Unit, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

E. Mailboxes, name plates, signs and exterior lighting affixed to the building will be Limited Common Elements allocated to the Units served.

5.2. Reallocation. Storage Areas and parking spaces assigned as Limited Common Element may be reallocated by an amendment to this Declaration executed by the affected Unit Owners in conformance with the Act; provided, however, that such reassignment shall at all times be voluntary and this Section shall not be interpreted to afford to any Unit Owner the right to compel the reassignment of any storage area or parking spaces.

ARTICLE 6
MAINTENANCE OF THE PROPERTY

6.1. Common Elements. The Association, as determined by the Executive Board, shall maintain, repair, and replace all of the Common Elements, except the portions of the Limited Common Elements that are required by this Declaration or the Act to be maintained, repaired, or replaced by the Unit Owners.

6.2. Individual Units. It shall be the duty and obligation of each Unit Owner, at such Unit Owner's expense, to maintain, repair, and replace all portions of such Owner's Unit, except the portions of the Unit required by the Declaration or the Bylaws to be maintained, repaired, or replaced by the Association. Upon approval by a majority vote of the Residential or Commercial Unit Owners and Executive Board, the Association may assume any maintenance or repair delegated to the Unit Owners as a Common Expense.

6.3. Limited Common Elements. Each Unit Owner shall be responsible for removing snow, leaves, and debris from all patios and decks that are Limited Common Elements appurtenant to such Owner's Unit and keeping such LCE in a clean condition. The Patio allocated as a CLCE to the Commercial Unit shall be maintained and repaired by the Commercial Unit Owner.

6.4. Garage. The garage will be maintained by the Association as a Residential Expense.

6.5. Right of Access. Any person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Community for the purpose of performing installations, alterations, or repairs and for the purpose of reading, repairing, and replacing utility meters and related pipes, valves, wires, and equipment; provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no request or notice is required, and the right of entry shall be immediate and with as much force as is reasonably necessary to gain entrance, whether or not the Unit Owner is present at the time.

6.6. Repairs Resulting From Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently, or by such Unit Owner's failure to properly maintain, repair, or make replacements to such Owner's Unit or to those Limited Common Elements for which such Unit Owner is responsible under § 6.3. The Association will be responsible for damage to Units that is caused by the Association intentionally, negligently, or by the Association's failure to maintain, repair, or make replacements to the Common Elements.

ARTICLE 7
ASSESSMENTS

7.1. Obligation. Owners, by accepting a deed to a Unit, are deemed to covenant to pay the Association Assessments including (1) the Periodic Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Elements and to perform the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted by law; and (3) Default Assessments which may be assessed against a Unit for the Owner's failure to perform an obligation under the Governing Documents or because the Association has incurred an expense on behalf of the Owner under the Governing Documents.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Elements, abandonment of his or her Units, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of

Assessments or set off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

7.2. Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of the Property and for the improvement and maintenance of the Common Elements all as more fully set forth in this Declaration and on the Plat.

7.3. Budget. The Executive Board will adopt a budget with Assessments sufficient to pay all Common Expenses and adequate reserves on an annual basis before the commencement of each calendar year.

7.4. Working Capital Account. The Association or Declarant shall require each buyer of a Unit to make a non-refundable payment to the Association in an amount equal to three times the monthly installment of the Periodic Assessment for the Unit, which sum shall be and held without interest by the Association to meet unforeseen expenditures, acquire additional services or equipment for the Owners or as a maintenance reserve. A Working Capital Account contribution shall be collected and transferred to the Association at the time of closing of each sale or re-sale of a Unit and shall be maintained for the use and benefit of the Association. Such payment shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of a Unit, an Owner shall not be entitled to a credit from the transferee for any unused portion of the Working Capital Account. Declarant may not use any of the Working Capital Account to defray any of its expenses, construction costs or to make up budget deficits.

7.5. Periodic Assessments. Periodic Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Periodic Assessments shall be payable on a prorated basis each month in advance and shall be due on the first day of each month, or such other periods as the Executive Board may determine. The omission or failure of the Association to fix the periodic Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Periodic Assessments in excess of the actual expenses incurred in any fiscal year. Until the Association makes an Assessment on a Unit, Declarant shall pay all expenses for the Unit. The initial Periodic Assessment will be due upon the closing of a sale of a Unit by Declarant to a third party, or occupancy of a Unit by a Guest, whichever first occurs.

7.6. Apportionment of Periodic Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses which will be divided among the Units according to formula in § 3.4A and allocated according to the resulting percentage of Common Expense liability in Exhibit B, except as follows. Any extraordinary maintenance, repair or restoration work on, or Common Expense benefitting fewer than all of the Units or Limited Common Elements shall be assessed to the Units benefited. For example, because the commercial unit as currently planned will be a restaurant, common expenses for trash, recycling and compost may be allocated in conformance with proportionate residential and commercial use. Insurance cost may be assessed in accordance with risk and utility costs may be assessed in proportion to use. Any Common Expense caused by the misconduct or negligence of any Owner shall be assessed solely against such Owner's Unit. Any Common Expense incurred or billed to the Association on a per Unit basis may be allocated to each Unit in accordance with such Unit cost.

7.7. Supplementary Assessments. If the Executive Board determines, at any time or from time to time, that the amount of the annual assessments is not adequate to pay for the costs and expenses of fulfilling the Association's obligations hereunder, one or more supplementary assessments may be made for the purpose of providing the additional funds required. To determine the amount required to be raised by each supplementary assessment, the Executive Board shall revise the budget, a summary of which shall be furnished to each Owner and shall set a date for a meeting of the Owners to consider the

ratification of such budget. Upon request, the Executive Board will deliver a summary of the revised budget to any Mortgagee. Based on such revised budget, the Executive Board may make a supplementary assessment for such fiscal year against each Unit.

7.8 Individual Purpose Assessments. The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

A. Those amounts expended by the Association for the benefit of any individual Unit or any occupant thereof, including but not limited to: Unit insurance; improvement, repair, replacement and maintenance specific to a Unit, including but not limited to the eradication and treatment of bed bugs; or improvement, repair, replacement and maintenance caused by the negligent or willful acts of any Owner, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;

B. Any extraordinary maintenance, repair, improvement and replacement costs of any area which the Association maintains on fewer than all the Units;

C. Any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of an Owner or its Guests;

D. All fines and costs assessed against an Owner pursuant to the Governing Documents; and

E. Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Unit and are reasonably determined to be allocable to a particular Unit.

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

7.10. Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Periodic, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

A. Assess a late charge for each delinquency in such amount as the Association deems appropriate.

B. Assess an interest charge from the date of delinquency at the yearly rate of four points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish, not to exceed twenty-one percent (21%) per annum;

C. Suspend the voting rights of the Owner or the right to use any Common Element during any period of delinquency;

D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

E. Disconnect any utility services to the Unit which are paid as a Common Expense;

F. Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

G. File a statement of lien with respect to the Unit and proceed with foreclosure as set forth below.

Assessments chargeable to any Unit shall constitute a lien on such Unit, including any improvements on the Unit. To evidence the lien created under this Section, the Association may, but is not required to, prepare a written notice setting forth (i) the address of the Association, (ii) the amount of such unpaid indebtedness, (iii) the amount of accrued penalty on the indebtedness, (iv) the name of the Owner of the Unit, and (v) a description of the Unit. The notice shall be signed and acknowledged by the President or a Vice-President of the Association or by the Association's Managing Agent or attorney, and the Association shall serve the notice upon the Owner by mail to the address of the Unit or to such other address as the Association may have in its files for such Owner. The Association may record the same in the office of the Clerk and Recorder of Summit County, Colorado. Such lien for Assessments shall attach from the due date of the Assessment. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under Colorado law. In the events of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

7.11. Personal Obligation. The amount of any Assessment chargeable against any Unit shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest, thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

7.12. Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such for such Assessments, all successors to the fee simple title of a Unit, except as provided in the Section named Subordination of Lien below, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorney's fees against such Unit without prejudice to such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association as set forth below.

7.13. Subordination of Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to (i) the lien of real estate taxes and special governmental assessments, (ii) liens and encumbrances recorded prior to the recordation of the Declaration, and (iii) liens for all sums unpaid for a First Mortgage of record, recorded before the date on which the assessment sought to be enforced became delinquent, except that the Association claims the priority for its assessment lien as granted in the Act. The lien of the Assessments shall be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Colorado. A seller's transfer of any Unit shall not affect the Association's lien except that sale or transfer of any Unit pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, or cancellation or forfeiture shall only extinguish the Association's liens as provided in the Act. The amount of such extinguished lien may be reallocated and assessed to all Units as a Common Expenses at the direction of the Executive Board. No sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of any Assessments made after the sale or transfer.

7.14. Notice to Mortgagee. The Association may report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

7.15. Statement of Status of Assessment Payment. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt, to the Association's registered agent, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Unit.

ARTICLE 8 **SPECIAL DECLARANT RIGHTS**

8.1. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Community:

- A. to complete any Improvements indicated on the Map;
- B. to maintain sales offices, management offices, signs advertising the Community, and models;
- C. to use easements through the Common Elements and Units for the purpose of making Improvements within the Community; and
- D. to appoint or remove an officer of the Association or an Executive Board Member during a period of Declarant control as provided in § 8.6.

8.2. Models, Sales Offices, and Management Offices. As long as the Declarant is a Unit Owner, the Declarant, its duly authorized agents, representatives, and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit, sales office, or management office. In addition, during periods of construction, Declarant may maintain a construction trailer on the Common Elements.

8.3. Construction; Declarant's Easement. The Declarant reserves the right to perform warranty work, repairs, and construction work in Units and Common Elements, to store materials in secure areas, and to control, and have the right of access to, work and repairs until completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey access, utility, and drainage easements to utility providers, the Town of Winter Park, or the State of Colorado.

8.4. Signs and Marketing. The Declarant reserves the right to post and maintain signs and displays in Units owned by Declarant and in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner that will not unreasonably disturb the rights of Unit Owners.

8.5. Declarant's Property. The Declarant reserves the right to remove and retain all its property and equipment used in the sales, management, construction, and maintenance of the Property, whether or not they have become fixtures.

8.6. Declarant Control of the Association.

A. Subject to Subsection 8.6(B), there shall be a period of Declarant control of the Association as referenced above in §3.4.

B. Not later than 60 days after conveyance to Unit Owners other than a Declarant of all the Units that may be created, not less than one-third of the Members of the Executive Board must be elected by Unit Owners other than the Declarant.

C. Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three Members, two directors shall be Residential Unit Owners and one Director shall be a Commercial Unit Owner. If any Unit is owned by a partnership, limited liability company, corporation, or similar entity, any officer, partner, manager, member, or employee of that Unit Owner shall be eligible to serve as a Member of the Executive Board and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. The Executive Board shall elect the officers. The Executive Board Members and officers shall take office upon election.

8.7. Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until ten (10) years have elapsed after recording of this Declaration.

8.8. Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

8.9. Exclusive Rights to Use Name of Development. No Person shall use the name "Prime Lofts Condominiums" or any derivative of such name or logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Prime Lofts Condominiums" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community and the Association shall be entitled to use the name "Prime Lofts Condominiums" and logo for any purposes which do not interfere with Declarant's Special Declarant Rights.

ARTICLE 9
INITIAL PROTECTIVE COVENANTS

9.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Property in order to protect the Owners' collective interests and the aesthetics and environment within the Project. In furtherance of that general plan, the Governing Documents establish affirmative and negative Covenants, easements, and restrictions on the Property, subject to certain rights vested in the Executive Board and the Owners to enable them to respond to changes in circumstances, conditions, needs and desires within the Project.

9.2. Owners Acknowledgment. All Owners, tenants, guests and invitees of Units are given notice that use of their Unit is limited by provisions of each of the Governing Documents as they may be amended, expanded and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that all Covenants applicable to the Project may change from time to time.

9.3. Rights of Owners. The Executive Board shall not adopt any Rule or Regulation in violation of the following provisions:

A. Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

B. Speech. The rights of Owners to display political signs and symbols in or on their Units of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and related users.

C. Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on Units of the kinds normally displayed in Units located in a residential project shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage or disturbance to other Owners and occupants.

D. Activities within Units. No rule shall interfere with the activities carried on within the confines of a Units, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise, odors or traffic, that create unsightly conditions visible outside the Units, that block the views from other Units, or that create an unreasonable source of annoyance.

E. Pets. The Rules may regulate, permit additional pets or prohibit the kind and number of such pets from time to time. However, no Rule may take retrospective effect so as to prohibit an Owner from keeping any domestic pet which was permitted under the Governing Documents when acquired.

F. Reasonable Rights to Develop. No Rule by the Association or Executive Board shall impede the Declarant's right to develop in accordance with the provisions of this Declaration.

G. Abridging Existing Rights. If any Rule would otherwise require Owners or related users to dispose of personal property which they owned at the time they acquired their interest in the Unit and such ownership was in compliance with all Rules and Regulations in force at that time, such rule shall not apply to any such Owners without their written consent. However, all subsequent Owners and related users of that Unit shall comply with such rule.

9.4. Initial Use Restrictions. The following restrictions apply within the Project unless expressly authorized (and in such cases, subject to such conditions as may be imposed) by a resolution unanimously adopted by the Executive Board:

A. Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 8, the following occupancy restrictions apply to all Units and to the Common Elements:

i. Residential Units shall be used for residential purposes only as allowed by local zoning ordinances and subject to Rules adopted by the Association. An Owner may use his or her Unit for a professional or home occupation, as long as the applicable zoning ordinances permit such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Community is created. The Commercial Unit may be used for retail, commercial, restaurant, office and other purposes permitted by the town zoning ordinances.

ii. All Unit Owners shall maintain their Units in a clean and well maintained condition. No storage of trash will be permitted in or outside any Unit in a manner that may permit the spread of fire, odors, seepage, or encouragement of vermin.

iii. All fixtures and equipment will be used for the purposes for which they were designed. The Association may restrict any material increase on the floor load unless special arrangements are made and an engineering determination of floor load capacity in the area of the heavy use is approved by the Association. No electrical device creating overloading of standard circuits may be used without permission from the Executive Board. Misuse or abuse of appliances or fixtures within a Unit that affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner who caused it. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

iv. Subject to the public-policy-based permissions contained in C.R.S., § 38-33.3-106.5, no signs, window displays, or advertising visible from outside a Unit (except for a name plate or sign not exceeding nine square inches in area, on the main door to each Unit) shall be maintained or permitted in any part of a Unit.

B. Restrictions on Vehicles.

i. Parking or storing of vehicles within the Property shall be subject to Rules enacted by the Executive Board and provisions of this Declaration.

ii. No portion of the Common Elements shall be used for parking, storage, or display for any type of trailer, ATV, RV, motor home, boat or accessories thereto.

iii. No abandoned or inoperable vehicles of any kind shall be stored or parked on the Project. An “abandoned or inoperable vehicle” includes, but is not limited to any automobile, truck, motorcycle, van, recreational vehicle or other device for carrying passengers, goods or equipment which has not been driven under its own propulsion for a period of two weeks or longer.

iv. Unlicensed motor vehicles such as go-carts, mini-bikes, unlicensed motor bikes, and all-terrain vehicles shall not be operated on the Common Elements.

v. Any vehicle parked on any portion of the Community in violation of these covenants or the Rules may be towed in conformance with all ordinances and statutes at the expense of the owner of the vehicle, and the Association may pursue any other remedy under the Governing Documents.

C. Nuisances/Compliance with Law. No immoral, improper, offensive, or unlawful use may be made of the Property. Nuisances are prohibited, including any use, activity, or practice which is the source of disturbance to or unreasonably interferes with the peaceful enjoyment or possession of a Unit or any portion of the Common Elements or any portion of the Community. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction over the Project or a portion thereof shall be observed and may be enforced by the Association as if the same were contained in the Governing Documents. In no event shall the activities of the Declarant which are reasonably necessary to the exercise of the rights granted by this Declaration and the Act be considered a “nuisance.”

D. Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property. Further, no Owner shall dispose or allow any person under the Owner’s control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

E. Noise/Nuisance. No noxious, offensive, dangerous, or unsafe activity shall be conducted in any Unit, nor shall anything be done, either willfully or negligently, that may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises, lights or odors. However, Owners and Guests acknowledge that the Commercial Unit and the CLCE patio may be used for restaurant, entertainment and commercial purposes and normal levels of noise, lights and odors associated with such uses are permitted.

F. Decks and Patios. Lawn furniture and electric barbecue grills may be used and stored on decks or patios of Units. Charcoal, open fires and propane grills are prohibited. Owners understand their use of the exterior Limited Common Elements can detrimentally affect other Owners. Music and seating of Guests on the Commercial Unit LCE Patio will be prohibited after 9pm. The Executive Board may adopt Rules governing appropriate use and appearance of the decks and patios.

G. Pets. Owners may keep a reasonable number of pets in Units as determined by the Board. Owners of pets on the Property must clean up after their pet and take all steps necessary to control excessive barking or other disturbances caused by their pets.

i. Containment. All pets must be kept primarily in a Unit and may temporarily be kept on the Limited Common Element deck when the Owner is present in the Unit. All pets must be kept on leashes when outside; no pets shall be permitted to run at large at any time.

ii. Pets of Guests/Nuisance. Owners and tenants with lease terms of 30 or more days, may keep no more than two domesticated pets (either 2 dogs, 2 cats, or 1 dog and 1 cat) in each Unit. Short term tenants or Guests who occupy a Unit for less than 30 days may not keep pets on the Property. The Board may enact Rules to further restrict numbers or types of pets, pets of Guests and may remove pets creating any nuisance.

H. Signs. Commercial Unit signs are permitted in conformance with the town code and any sign plan approved by the Association. All residential signs must be approved by the Board.

I. Trash and Recycling. The Association will have the exclusive right to engage trash and recycling services for the Community.

J. Insurance. Nothing shall be done or kept which may result in a material premium increase or cancellation of insurance maintained by the Association.

K. Smoking and Vaping Restrictions. It is in the best interest of the Association to limit exposure to environmental tobacco and marijuana smoke within the Property and to reduce the levels of exposure of Owners and family members, guests, tenants, employees, contractors and agents, to environmental tobacco and marijuana smoke. Restricting levels of exposure to smoke will not only preserve and improve the health, comfort, and environment of those persons, but will also protect the value of the Property. Smoking of tobacco and marijuana and use of electronic cigarettes which discharge aerosol vapor is prohibited within the Community as follows:

i. *Common Elements.* Smoking is prohibited in or on all Common Elements including but not limited to the private access drives, parking areas, landscaped common lawn and all interior hallways and other parts of any building.

ii. *Limited Common Elements.* Smoking is prohibited in or on all Limited Common Elements including but not limited to patios, decks or porches adjacent to a Unit.

iii. Unit Restrictions. Smoking and use of electronic cigarettes which discharge aerosol vapor inside a Condominium Unit which unreasonably interferes with the peaceful

enjoyment or possession of another Unit or any portion of the Common Elements is considered a nuisance and is prohibited.

L. Unit Cultivation Restriction. Mature marijuana plants can develop a strong odor that could lead to trespass or nuisance claims similar those made because of drifting smoke. Cultivation, like smoking, may decrease a Unit's resale value, and the overall value of the Property. Marijuana cultivation inside a Condominium Unit which unreasonably interferes with the peaceful enjoyment or possession of another Unit or any portion of the Common Elements is accordingly considered a nuisance and is prohibited.

9.5. Restrictions on Ownership and Leasing of Units.

A. Lease and Fractional Restriction Rationale. Owners hold fee simple titles to their Units but share in use and governance of common elements. Community governance and maintenance of common elements is a shared responsibility. Each owner is vulnerable to diminution in the value and enjoyment of the Unit if:

- i. other Owners do not pay their assessments;
- ii. Owners transfer ownership or leasehold interests in any Unit so as to inhibit loan availability in the community; or
- iii. if Community occupants fail to abide by restrictions governing conduct and shared use of Common Elements.

The restrictions in this Section are intended to promote a cohesive community of Owners for their common welfare. The restrictions in this Section may be amended, supplemented or terminated only by amendment of this Declaration, and not by adoption of a Rule.

B. Leases. The term "lease" shall include any agreement for the use, lease or rental of a Unit. Owners may lease their Units for any length of term subject to the following conditions:

- i. All leases shall be in writing.
- ii. All leases shall provide that the terms of the lease and the tenant's occupancy of the Units shall be subject in all respects to the provisions of the Governing Documents, as the same may be amended from time to time, and that any failure by such tenant to comply with the provisions of these instruments, in any respect, shall be a default under the lease, and the default may be enforceable by the Executive Board, the Owner/landlord, or both.
- iii. In the event of the failure of the tenant to comply with the terms of this Declaration or any other Association Document, the Owner shall be responsible and liable to the Association as if the Owner was the party that failed to comply with the terms of Association Document, and at the request of the Association, the Owner shall, at the Owner's sole cost and expense, terminate the Lease and commence eviction proceedings to evict the lessee from the Owner's Unit.
- iv. The Association may require any Owner who leases a Unit to forward a copy of the lease to the Association within ten (10) days after the execution by Owner and the tenant.

C. Maximum Number of Co-Owners. No Unit may be owned by or leased to more than four Owners. Upon sale each Owner must own at least an undivided $\frac{1}{4}$ interest as tenants in common or as joint tenants. The number of members, partners, shareholders or beneficiaries of any entity which owns a Unit, including partnerships, corporations, limited liability companies, trusts and other business entities, is also limited to no more than four. Any Owner of an ownership or leasehold interest in

a Unit, whether as tenant in common, joint tenant or as owner/beneficiary of any entity is considered a Co-Owner. Two or more Co-Owners related by blood or marriage may together own any interest in a Unit and will be considered one Owner.

D. Joint and Several Liability. Each Co-Owner of a Unit will be jointly and severally liable for payment of all Association assessments to such Unit and for any other sums due by any other Co-Owner of such Unit under the Governing Documents.

E. Unit Management. All Co-Owners will execute an agreement to address ownership interest, management, maintenance, loans, default remedies and use. The Agreement will also specify termination and exit provisions for the Co-Owners, including sale of the Unit. The agreement will be subject to the reasonable approval of the Association. To cover additional maintenance costs for Common Elements by Units with Co-Owners and attorney's fees incurred by the Association to review the agreement a reasonable fee not to exceed the amount of the estimated quarterly assessment for the Unit will be charged to review and approve the co-ownership and management agreement. Any Unit Co-Ownership regime which inhibits or increases the cost of mortgage financing in the community may be rejected by the Executive Board.

F. Time Share Estate Limitation. Time share estates as defined in the Condominium Ownership Act, as well as any interval ownership, fractional estate, vacation club or similar arrangement are prohibited.

ARTICLE 10 **EASEMENTS AND LICENSES**

10.1. Owner's Easement of Enjoyment. Every Owner has an easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Unit, subject to the provisions contained herein.

10.2. Recorded Easements. The Property shall be subject to all easements as shown on the Map and in Exhibit A-1, and to those easements set forth in this Article. The Community may be subject to other easements or licenses granted by the Declarant pursuant to Article 8 of this Declaration.

10.3. Easement for Ingress and Egress. Declarant grants as an appurtenance of each Unit a non-exclusive easement of ingress and egress across the Common Elements as shown on any recorded Map. The specific means of ingress and egress shall be subject to change as the Association shall from time to time deem necessary so long as a reasonable means of access is always provided.

10.4. Utility Easements. There is hereby created a general easement upon, across, over, in and under the Common Elements for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electrical, and cable communications systems. By virtue of this easement, it shall be expressly permissible and proper for the companies providing such services to install and maintain necessary equipment, wires, circuits and conduits under the Property. Such utilities may temporarily be installed above ground during construction, if approved by Declarant. Any person or utility company disturbing the surface of the Property during installation, maintenance or repair of facilities within an easement will restore the surface to its original grade and re-vegetate or restore the surface to its former condition.

10.5. Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit, the Association shall have an easement for such encroachment and for the maintenance of those Common Elements. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements or upon another Unit, the Owner of the encroaching Unit shall and does have an easement for such encroachment and for the maintenance of same. Such encroachments

shall not be considered to be encumbrances either on the Common Elements or on a Unit. Encroachments include, but are not limited to, encroachments caused by error in the original construction of the Community, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by authorized repair or reconstruction, or movements of the Community or any part thereof. The easements for such encroachments shall continue for whatever period the encroachment exists. The foregoing notwithstanding, however, nothing contained herein shall entitle the party benefited by such encroachment to maintain such encroachment in the event of reconstruction whereby the encroachment could reasonably be eliminated.

ARTICLE 11 **INSURANCE**

11.1. Insurance Required to be Obtained by the Association. The Association shall obtain and maintain all Insurance required to be obtained and maintained by the Association under the Act and any additional Insurance that the Executive Board deems necessary.

11.2 Casualty Insurance for Improvements.

A. The Association shall obtain and maintain casualty insurance for all Improvements located on or forming a part of the Common Elements, and the Units, including, without limitation, the structural and mechanical components serving the Units, in accordance with the requirements set forth in Section 11.1 above. However, the policy shall exclude finished interior surfaces of the walls, floors, and ceilings in the Units, and any equipment, furniture, wall trimmings, and personal property installed by an Owner.

B. Owners shall obtain and maintain a homeowner's insurance policy (HO-6 or equivalent) for such Owner's benefit and at such Owner's expense to cover any portion of a Unit not insured by the Association.

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

11.4. Fidelity Insurance. To the extent obtainable at reasonable cost, the Association shall obtain fidelity insurance to protect against dishonest acts on the part of its officers, directors, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, fidelity coverage shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 25% of the estimated annual operating expenses of the Association, including reserves. Such insurance shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

11.5. Deductibles. Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

A. The Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Elements unless the damage is the liability of an Owner or the Owner's Guest's as set forth in this Declaration, in which case the Association shall seek reimbursement of the deductible amount as an Assessment in compliance with and under the terms of this Declaration. Any Owner who receives the proceeds of any Association insurance shall be responsible for the payment of the deductible in proportion to the percentage of insurance proceeds received. Such deductible shall be

due within 10 days of notification and shall be considered an assessment allocated directly to the Unit and shall be collected as provided in this Declaration.

B. The Owner shall pay or absorb the deductible for any loss to the Unit that would be the responsibility of the Owner in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, in which case the negligent party shall be responsible for the deductible. If a negligent Owner fails to pay the deductible for damage to a Unit, the Association may, but shall not be obligated to seek the deductible on behalf of the Owner suffering the loss as provided in this Declaration for the collection of Assessments.

ARTICLE 12 **DAMAGE OR DESTRUCTION**

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

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

12.3. Decision Not to Rebuild Common Elements. If at least sixty-seven percent (67%) of the Owners and all directly adversely affected Owners (as determined by the Act) agree in writing not to repair and reconstruct improvements within the Community and if no alternative improvements are authorized, then the damaged property shall be restored to a condition compatible with the remainder of the Community and maintained as a portion of the Common Elements by the Association. Any remaining insurance proceeds shall be distributed in accordance with applicable law.

12.4. Termination. Termination of the Community may be accomplished only in accordance with C.R.S., § 38-33.3-218 by a vote of at least sixty-seven percent (67%) of the Owners, subject to the rights of Eligible Mortgagees under Article 13. If the necessary votes are obtained, the agreement of the Owners to terminate the Community and this Declaration shall be evidenced by a termination agreement or ratification thereof executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the Summit County Records, the Community shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved.

ARTICLE 13 **SECURITY INTERESTS AND ELIGIBLE MORTGAGEES**

The following provisions are for the benefit of holders, insurers or guarantors of Eligible Mortgagees on Units.

13.1. Title Taken by Lenders. Any Person holding a Security Interest in a Unit who obtains title to the Unit pursuant to remedies exercised in enforcing the Security Interest, including foreclosure or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable from the date title to the Unit is acquired.

13.2. Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Eligible Mortgagee who is a beneficiary of a Security Interest against the Unit.

13.3. Right to Pay Taxes and Charges. Lenders who hold Security Interests against Units may, jointly or singly, pay taxes or charges which are in default and which may or have become a lien against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and holders of Security Interests making such payments shall be owed immediate reimbursement therefore from the Association.

13.4. Financial Statement. Upon written request from any Eligible Mortgagee, which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety days any financial statement of the Association for the immediately preceding fiscal year at the expense of such Mortgagee.

13.5. Notice of Action. Any Eligible Mortgagee and any Agency, which holds, insures or guarantees a first lien Security Interest, upon written request to the Association (which shall include the agency's name and address and the Unit number), will be entitled to timely written notice of:

A. Any proposed amendment of the Governing Documents effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interest in the Common Elements appurtenant to the Unit or the liability of Assessments relating thereto, (iii) the number of votes in the Association relating to any Unit, or (iv) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in § 13.6 below;

B. Any proposed termination of the common interest community;

C. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a first lien Security Interest held, insured or guaranteed by such Agency;

D. Any delinquency in the payment of Assessments owed by the Unit Owner subject to the Mortgage which such delinquency has continued for a period of sixty days;

E. Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 11.

13.6. Amendment of Governing Documents. Approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) if the amendment to the Governing Documents add or delete any material provisions, which establish, provide for, govern or regulate any change governed by Agency regulations, excepting amendments approved by the Association as provided in Article 4 above.

13.7. Inaction by Lenders or Agency. If this Declaration or any Governing Documents require the approval of any Agency or holder of a Security Interest then, if any lenders or Agency fails to respond to any written proposal for such approval within sixty (60) days after such Person receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Person shall be deemed to have approved such proposal provided that the notice was delivered to the Person by certified or registered mail, return receipt requested.

ARTICLE 14 **DURATION OF COVENANTS AND AMENDMENT**

14.1. Covenants Binding. Each provision of this Declaration and a promise, covenant and undertaking to comply with each such provision (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed; (ii)

shall by virtue of acceptance of any right, title or interest in any of the Property by an Owner be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner and shall be binding on such Owner or his or her respective heirs, personal representatives, successors or assigns, to, with and for the benefit of the Declarant and all Owners within the Project; (iii) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to all of such Owner's right, title and interest to any of the Property, which lien shall be deemed a lien in favor of the Declarant, as its interest may appear, and all Owners within the Subdivision; and (iv) shall run with the land.

14.2. Amendment.

A. Except as otherwise specifically provided elsewhere in this Declaration, or in the Act, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners holding not less than sixty percent (60%) of the votes possible to be cast under this Declaration. Any amendment must be executed by the president of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying that signatures of a sufficient number of Owners approving the amendment are on file in the office of the Association. In addition, the approval requirements set forth in Article XIII shall be met, if appropriate.

B. Notwithstanding anything to the contrary contained in this Declaration:

i. The Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, the Articles of Incorporation and Bylaws of the Association, at any time for the purpose of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provision of any of such documents without the consent of any of the Owners or First Mortgagees.

ii. The Declarant hereby reserves and is granted the right and power to record special amendments to the Declaration, the Articles and Bylaws of the Association at any time in order to comply with any requirement of any of the Agencies or to induce any of the Agencies to make, purchase, sell, insure or guarantee First Mortgages, to comply with the requirements and powers set forth in the Act, or to conform with any amendments, modifications, revisions or revocations of the Grand County Building Code, without the consent of the Owners or any First Mortgagees.

14.3. When Modifications Permitted. Notwithstanding the provisions of that Section named Amendment above or that Section named Revocation below, no termination, extension, modification, or amendment of this Declaration made prior to the termination of Declarant's control shall be effective unless the prior written approval of Declarant is first obtained.

14.4. Revocation. This Declaration shall not be revoked nor shall the Project be terminated, except as provided in that Article named Condemnation regarding total condemnation, without the consent of the Owners holding 67% of the votes in the Association and evidenced by a written instrument duly recorded.

14.5. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

ARTICLE 15 **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

15.1. Agreement to Encourage Resolution of Disputes Without Litigation.

A. Declarant, the Association and its officers, directors, and committee members, Owners, all persons subject to this Declaration and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection B, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in § 15.2 in good faith effort to resolve such Claim.

B. As used in this Article, the term “Claim” shall refer to any claim, grievance, or dispute arising out of or relating to:

i. the interpretation, application, or enforcement of the Governing Documents;

ii. the rights, obligations and duties of any Bound Party under the Governing Documents; or

iii. the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

iv. any claim asserted by the Association on its own behalf, or on behalf of the Owners of two or more Units, for damages or other relief arising out of any alleged defect in the design or construction of improvements within the Project at any time while this Declaration is in force (“Construction Defect Claims”).

C. The following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in § 15.2:

i. any suit by the Association to collect assessments or other amounts due from any Owner;

ii. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the Court may deem necessary in order to maintain the status quo or to enforce the provisions of this Declaration upon determination that a violation exists;

iii. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

iv. any suit in which any indispensable party is not a Bound Party; and

v. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by § 15.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

15.2. Dispute Resolution Procedures.

A. Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent and to the Board stating plainly and concisely:

- i. the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- ii. the legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
- iii. the Claimant's proposed resolution or remedy; and
- iv. the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

B. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

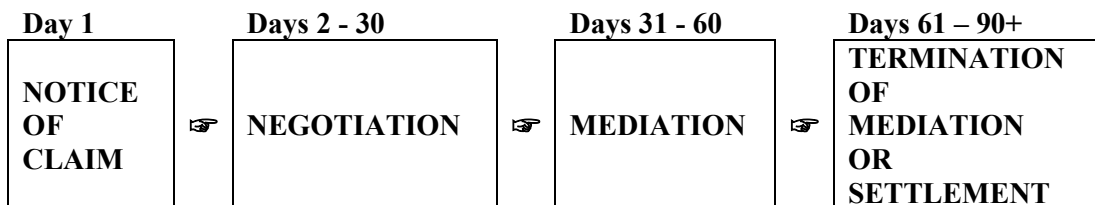
C. Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in § 15.2.A (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Colorado.

i. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

ii. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated.

iii. Each Party shall bear its own costs of the mediation, including attorneys' fees and each Party shall share equally all fees charged by the mediator.

ALTERNATIVE DISPUTE RESOLUTION PROCESS



D. Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In that event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

15.3. Construction Defect Action. To the extent of any insurance proceeds realized from the Association's property insurance the Association waives its claims for damages against any contractor or subcontractor involved in the construction of the Units or the Common Elements. In addition to any requirements for initiating a construction defect action provided in the Governing Documents, the Executive Board shall not initiate a construction defect action as unless it complies with the disclosure and obtains approval from majority vote of the Owners as set forth in C.R.S. § 38-33.3-303.5 of the Act. In addition, the following procedures shall govern all Construction Defect actions whether brought by the Association or by any Owner. If any provisions of this § 15.3 is held invalid by a court of competent jurisdiction such section will be severed and the remaining provisions shall be enforceable.

A. Final and Binding Arbitration of Construction Defect Claims.

i. If the parties do not agree in writing to a settlement of the Construction Defect Claim within 15 days of the Termination of Mediation, any Owner who is the Claimant shall have 15 additional days to submit the Construction Defect Claim to arbitration. All arbitrations shall be conducted in Denver, Colorado and in accordance with JAMS Streamlined Rules, or by agreement of the parties JAMS Expedited Construction Arbitration Rules, unless otherwise agreed upon by the parties. Any sitting arbitrator shall be a mutually-acceptable, licensed Colorado attorney, or retired Colorado Judge, with not less than 15 years' experience in real estate or construction law who has been an arbitrator in at least three (3) prior arbitrations. If the Association is the Claimant, the Executive Board shall have 15 days to deliver the meeting notice to Owners to commence the procedures required by the Act to consider whether a construction defect action should be pursued. If not timely submitted to arbitration or if the meeting notice is not timely delivered, or if Claimant fails to appear for the arbitration proceeding, the Construction Defect Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Construction Defect Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons other than Claimant.

ii. This § 15.3 is an agreement to arbitrate and is specifically enforceable under the applicable laws of the State of Colorado. Such agreement to arbitrate and all terms relating thereto in this § 15.3 (including, without limitation, restrictions on Claimants rights to damages) shall apply, without limitation, to any "action" as defined in the Colorado Construction Defect Action Reform Act, C.R.S. § 13-20-802.5(1). The arbitration decision and the award, if any (the "Decision"), shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

B. Allocation of Costs of Resolving Construction Defect Claims. Each party, including, without limitation, any Owner and the Association, shall share equally all fees, expenses and charges payable to the mediator(s) and all fees, expenses and charges payable to the arbitrator(s) and the arbitration firm for conducting the arbitration proceeding. Under no circumstances, however, shall any party be entitled to recover any of its attorneys' fees, expenses or other mediation or arbitration costs (except to the extent specifically provided under C.R.S. § 38-33.3-123 of the Act), from any other party. BY TAKING TITLE TO A UNIT AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES OR EXPENSES (EXCEPT AS SPECIFICALLY PROVIDED UNDER C.R.S. § 38-33.3-123) IN CONNECTION WITH THE ARBITRATION OF A CONSTRUCTION DEFECT CLAIM. The limitation described above on awarding attorneys' fees and expenses shall not apply to enforcement actions undertaken pursuant to Subsection 15.3.D. below.

C. Limitation on Damages. Claimant shall not be entitled to receive any award of damages in connection with the arbitration of a Construction Defect Claim other than such its actual damages, if any, and the Association and any Owner shall be deemed to have waived their respective rights to receive any damages in a Construction Defect Claim other than actual damages including,

without limitation, attorneys' fees and expenses (except as specifically provided under C.R.S. § 38-33.3-123), special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A UNIT AND AS A MEMBER, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY CONSTRUCTION DEFECT CLAIM UNDER § 15.3, THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION OR DESIGN DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

D. Enforcement of Resolution. If any Construction Defect Claim is resolved through arbitration pursuant to Subsection 15.3.A above, and any Bound Party thereafter fails to abide by the terms of such agreement, or if any Bound Party fails to comply with a Decision, then any other party may file suit or initiate proceedings to enforce such agreement or Decision without the need to again comply with the procedures set forth in this Article XV. Notwithstanding the terms of Subsection 15.3.B. above, in such event, the party taking action to enforce the agreement or Decision shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Decision including, without limitation, attorneys' fees and court costs.

E. Multiple Party Claims. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action.

F. No Amendment; Enforcement by Declarant. The terms and provisions of this § 15.3 inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard to whether Declarant owns any portion of the Real Estate at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS § 15.3 ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS AND THAT IN THE ABSENCE OF THE PROVISIONS CONTAINED IN THIS § 15.3, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. BY ACCEPTING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS § 15.3 LIMIT HIS OR HER RIGHTS WITH RESPECT TO THE RIGHT AND REMEDIES THAT MAY BE AVAILABLE IN THE EVENT OF A POTENTIAL CONSTRUCTION DEFECT AFFECTING THE CONDOMINIUMS OR ANY PORTION THEREOF, INCLUDING ANY UNIT.

G. This § 15.3 is intended to apply to Construction Defects alleged in reference to construction of any portion of the Project under a contract in which Declarant is a party, and shall not be deemed to limit the Association in proceedings against a construction professional for Construction Defects alleged with respect to construction that takes place under a contract between the Association and a construction professional to which Declarant is not a party.

15.4. Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedure, if applicable, the Association shall not initiate any judicial or

administrative proceeding unless first approved by 67% of the Owners, except that no such approval shall be required for actions or proceedings by the Association:

- A. initiated during the period of Declarant control;
- B. initiated to enforce the provisions of the Declaration, including collection of Assessments and foreclosure of liens;
- C. initiated to challenge ad valorem taxation or condemnation proceedings;
- D. initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- E. to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

15.5. Compliance and Enforcement.

A. Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and an opportunity for a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

- i. imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);
- ii. suspending an Owner's right to vote;
- iii. suspending any services provided by the Association to an Owner or the Owner's Units if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;
- iv. exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- v. requiring an Owner, at its own expense, to remove any structure or improvement in violation of the Governing Documents and to restore the Improvements to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- vi. without liability to any person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Architectural Guidelines from continuing or performing any further activities in the Project; and
- vii. levying Default Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

B. In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the alternative dispute resolution procedures set forth above:

i. exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

ii. bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

C. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Units and the Owner as a Default Assessment. Except in an emergency situation, the Association shall provide the owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

D. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

E. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

i. the Association's position is not strong enough to justify taking any or further action;

ii. the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

iv. that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

F. The Association, by contract or other agreement, may enforce applicable Town of Frisco ordinances and the Town may to enforce ordinances within the Community for the benefit of the Association and its Members.

ARTICLE 16 **MISCELLANEOUS PROVISIONS**

16.1. Captions. The captions contained in the Governing Documents are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Documents or the intent of any provision thereof.

16.2. Gender. The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

16.3. Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

16.4. Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability, or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

16.5. Conflict. The Documents are intended to comply with the requirements of the Act. If there is any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this _____ day of _____, 20____.

20EMAIN, LLC, a Colorado limited liability company

By: Shervin Rashidi, Manager

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Shervin Rashidi as Manager of 20EMAIN, LLC, a Colorado limited liability company.

My Commission expires: _____ .

Notary Public

[STAMP]

EXHIBIT A TO THE DECLARATION
DESCRIPTION OF PROPERTY

LOTS 9, 10, 11 AND 12, BLOCK 2, KING SOLOMON SECOND ADDITION TO THE FRISCO TOWNSITE, COUNTY OF SUMMIT, STATE OF COLORADO

EXHIBIT B TO THE DECLARATION
ALLOCATED INTERESTS

-Common Expense Liability and Votes-

Unit	Sq Ft	Common Expense %	Residential Expense %	Commercial Expense %	Votes
Unit 101 - Commercial	3,550	19.86%	0.00%	100.00%	1
Unit 201	2,236	12.51%	15.61%	0.00%	1
Unit 202	2,035	11.38%	14.20%	0.00%	1
Unit 203	2,088	11.68%	14.57%	0.00%	1
Unit 204	861	4.82%	6.01%	0.00%	1
Unit 205	856	4.79%	5.97%	0.00%	1
Unit 301	2,306	12.90%	16.09%	0.00%	1
Unit 302	2,217	12.40%	15.47%	0.00%	1
Unit 303	867	4.85%	6.05%	0.00%	1
Unit 304	862	4.82%	6.02%	0.00%	1
Total	17,878	100.00%	100.00%	100.00%	10

Common Expense Liability

The formula for the share of Common Expenses allocated to each Unit is set forth in §3.4A and allocated according to the resulting percentage of Common Expense liability in Exhibit B, except as follows. Any extraordinary maintenance, repair or restoration work on, or Common Expense benefiting, fewer than all of the Units or Limited Common Elements shall be assessed to the Units benefited. Insurance cost may be assessed in accordance with risk and utility costs may be assessed in proportion to use. Any Common Expense caused by the misconduct or negligence of any Owner shall be assessed solely against such Owner's Unit. Any Common Expense incurred or billed to the Association on a per Unit basis may be allocated to each Unit in accordance with such Unit cost.

Votes

Each Unit will be allocated one vote.