

Indexing Note:

Index in grantee's index under "Sun Vail Condominiums" (the name of the community) and "Sun Vail Condominium Association" (the name of the Association) and in the grantor's index under "Sun Vail Condominium Association" (the name of the party executing this Amended and Restated Declaration).

**AMENDED AND RESTATED CONDOMINIUM DECLARATION
FOR SUN VAIL CONDOMINIUMS**

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AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR SUN VAIL CONDOMINIUMS

This Amended and Restated Declaration for Sun Vail Condominiums ("Declaration") is made effective upon recording.

RECITALS

A. The Condominium Declaration for Sun Vail Condominiums was recorded July 13, 1979 in Book 288 at Page 144, in the records of the Clerk and Recorder for Eagle County, Colorado. The Declaration has been amended and supplemented by: that certain First Supplement to Condominium Declaration for Sun Vail Condominiums recorded February 19, 1980 in Book 298 at Page 908, in the records of the Clerk and Recorder for Eagle County, Colorado, and; that certain Second Supplement to Declaration for Sun Vail Condominiums recorded December 3, 1981, in Book 332 at Page 801, in the records of the Clerk and Recorder for Eagle County, Colorado, and; as amended by the certain First Amendment to Condominium Declaration for Sun Vail Condominiums recorded August 10, 1994, in Book 647 at Page 334, in the records of the Clerk and Recorder for Eagle County, Colorado, and; as further supplemented by that certain Third Supplement to Condominium Declaration for Sun Vail Condominiums recorded August 10, 1994, in Book 647 at Page 335, in the records of the Clerk and Recorder for Eagle County, Colorado, and; as further supplemented by that certain Fourth Supplement to Condominium Declaration for Sun Vail Condominiums recorded December 8, 1995, in Book 683 at Page 205, in the records of the Clerk and Recorder for Eagle County, Colorado, and; any other amendments or supplements of record (collectively, the "Original Declaration").

B. Section 15 of the Original Declaration provides that the Original Declaration may be amended upon written approval of Owners of 75% or more of the general common elements and 75% of all first lienors ("First Mortgagees"); however, as to the Owner voting requirements, C.R.S. § 38-33.3-217 states that a declaration may be amended only by the affirmative vote or agreement of Unit Owners holding not more than 67% of the total Association vote. Therefore, the Declaration may be amended by Owners holding not less than 67% of percentage ownership interest in the general common elements.

C. Owners holding at least 67% of the interests in the general common elements and 75% of the First Mortgagees of all the Condominiums Units hereby desire to amend the Original Declaration, have approved this Amended and Restated Declaration, and have determined this Declaration to be reasonable and not burdensome.

D. This Declaration does not alter the undivided interest of the Units and does not terminate the Condominium.

E. The purposes of the amendments in this Amended and Restated Declaration include, but are not limited to the following:

- to update the Original Declaration to comply with current state law;
- to clarify the allocation of maintenance responsibilities and insurance between the Association and Owners;
- to delete declarant rights and responsibilities that are no longer applicable;
- to change restrictions in the Community;
- to update provisions so as to allow the Association to efficiently operate the Community and deal with Community concerns; and
- to add provisions that provide tools for the Association to effectively solve problems and enforce the Declaration, Bylaws and Rules and Regulations.

F. This is a complete restatement and replacement of the Original Declaration, and the Original Declaration is replaced by the covenants, servitudes, easements and restrictions set forth in this Amended and Restated Declaration.

ARTICLE 1. DEFINITIONS

Section 1.1 Unless otherwise specifically provided, the following definitions shall apply to the terms used in these Governing Documents:

- (a) *Act*. The Act means the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., Colorado Revised Statutes, as it may be amended from time to time.
- (b) *Allocated Interests*. The Allocated Interests are undivided interests in the Common Elements, the Common Expense liability, and votes in the Association, allocated to Units in the Community.
- (c) *Association*. The Association is the Sun Vail Condominium Association, a Colorado non-profit corporation, and its successors.
- (d) *Board or Board of Directors*. The Board or Board of Directors is the body responsible for management and operation of the Association. The term shall have the same meaning as executive board as defined in the Act.
- (e) *Building*. A single building containing Units as shown on the Map.
- (f) *Bylaws*. The Bylaws are the Bylaws of the Association, as they may be amended from time to time.
- (g) *Common Elements*. The Common Elements are those portions of the property in the Community other than a Unit, and are co-owned by the Owners as tenants-in-common.
- (h) *Common Expenses*. The Common Expenses are the expenses or financial liabilities for the operation of the Community, including, but not limited to, those expenses incurred for repairing, replacing or operating the Common Elements and for fulfilling any of the Association's obligations.
- (i) *Community*. The Community is the Sun Vail Condominium Community, including all that real property which was submitted to the Original Declaration and/or which is subject to this Declaration.
- (j) *Declaration*. The Declaration is this Amended and Restated Condominium Declaration for Sun Vail Condominium, including any amendments or supplements that may be recorded from time to time.
- (k) *Director*. A Director is a member of the Board of Directors.
- (l) *Common Elements*. Those portions of the property subject to this Declaration and the Map (except the Units) and the improvements thereon, including, without limitation: the structural components of the Buildings; such improvements, buildings or areas as are provided for community recreation, utility or for common use; service walks, parking areas; and all other parts of such land and the improvements thereon necessary or convenient to its existence, maintenance and safety which are normally and reasonably in common use, including the air space above such land. The Common Elements shall be owned as tenants-in-common by the Owners of the separate Units, each Owner of a Unit having an undivided interest in such Common Elements as is hereinafter provided.
- (m) *Governing Documents*. The Governing Documents are this Declaration, the Map, the Articles of Incorporation of the Association, the Bylaws, Rules and Regulations, and Policies and Procedures, all as they may be amended from time to time. Any exhibit, schedule or certification accompanying a document is a part of that document.

(n) *Improvements.* Improvements are any construction, structure, building, equipment, fixture, facilities and the like existing or to be constructed in the Community, including without limitation buildings, trees and shrubbery planted by the Association, paving, utility wires, pipes and light poles.

(o) *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 Units as more particularly set forth in this Declaration or by operation of the Act.

(p) *Map.* Map means the condominium map(s) for the Community as recorded, which map(s) is/are a part of this Declaration.

(q) *Member.* As used herein, the term "Member" is synonymous with "Unit Owner" or "Owner", but does not include a Mortgage Holder.

(r) *Mortgage Holder.* The holder of any mortgage or first deed of trust.

(s) *Person.* A Person is an individual, corporation, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

(t) *Rules and Regulations.* The Rules and Regulations are the rules for the use of Common Elements and Condominium Units and for the conduct of persons in connection therewith within the Community, adopted and amended by the Association from time to time as allowed for under this Declaration and the Act.

(u) *Unit or Condominium Unit.* A Unit or Condominium Unit is that portion of the Community designated for separate ownership or occupancy, the boundaries of which are more particularly described on the Map and this Declaration, together with the undivided interests in and to the Common Elements appurtenant thereto.

(v) *Unit Owner or Owner.* A Unit Owner or Owner is the record titleholder of a Condominium Unit within the Community. 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.

ARTICLE 2. DIVISION OF PROPERTY INTO CONDOMINIUM UNITS

Section 2.1 **Real Property.** The Community consists of Units, Common Elements, and Limited Common Elements and each Unit's undivided interest in and to the Common Elements.

Section 2.2 **Unit Boundaries.** The boundaries of each Unit subject to this Declaration are shown on the Map, and includes that part of the structure or Building, which lies within the following boundaries:

(a) *Horizontal Boundaries.* The Unit's horizontal boundaries are the unfinished interior surfaces of the floors and ceiling.

(b) *Vertical Perimeter Boundaries.* Each Unit's vertical boundaries are the vertical planes defined by the unfinished interior surfaces of the perimeter or vertical walls.

(c) *Inclusions.* Each Unit includes the spaces and improvements lying within the boundaries described in (a) and (b) above, including windows, window frames, doors and door frames, and also including all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces.

(d) Existing Physical Boundaries. In interpreting deeds and the Map, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Map thereof are conclusively presumed to be its boundaries.

Section 2.3 Limited Common Elements. A portion of the Common Elements is reserved for the exclusive use of the individual Owners of the respective Units and such areas are referred to as "Limited Common Elements." The Limited Common Elements include any portions of the Common Elements depicted on the Map as a Limited Common Element.

ARTICLE 3. ALLOCATED INTERESTS

Section 3.1 Formulas for the Allocation of Interests/Membership. The interests allocated to each Unit have been divided equally among all Units. Every Person who is a record Owner of a fee interest in any Unit subject to this Declaration is a Member of the Association. Membership is appurtenant to and may not be separated from ownership of any Unit. No Owner, whether one or more Person, will have more than one membership per Unit owned.

Section 3.2 Undivided Interest in the Common Elements. The percentage of the ownership interest in the Common Elements is divided equally among all Units.

Section 3.3 Liability for the Common Expenses. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses will be assessed equally among all Units in the Community.

Section 3.4 Votes. Each Owner or collective Owners of a Unit shall have one vote. When more than one Person holds an ownership interest in any Unit, the vote for the Unit will be exercised as those Owners determine among themselves, otherwise the Unit's vote will be suspended if more than one Person seeks to exercise it. Any specified percentage, portion or fraction of Unit Owners, unless otherwise stated in the Governing Documents, means the specified percentage, portion or fraction of all of the votes available.

Section 3.5 Description of Condominium Unit. Every contract, deed, lease, mortgage, trust deed, will or other instrument may legally describe a Condominium Unit by its identifying legal description, Unit number, and the street address and the building symbol followed by the name of the Community with further reference to the condominium Map and Declaration filed for record. 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 the Owner's interest in the Common Elements and the Limited Common Elements appurtenant thereto. Each such description shall be constructed to include a non-exclusive easement for ingress and egress to an Owner's Unit and use of all of the Limited Common Elements.

Section 3.6 Governing Documents and Supplements. The reference to the condominium Map and Declaration in any instrument shall be deemed to include any supplements to the condominium Map or Declaration without specific reference thereto.

ARTICLE 4. OWNERSHIP & TAXATION

Section 4.1 Ownership. A Condominium Unit may be held and owned in any real property tenancy relationship recognized under the laws of the State of Colorado. Each Unit and the allocated interest appurtenant to the Unit shall be inseparable and may be conveyed, leased, devised or encumbered only as a single Condominium Unit.

Section 4.2 Taxation. Each Unit and the Allocated Interest in the Common Elements appurtenant thereto shall be deemed a parcel and subject to separate real property assessment and taxation.

Section 4.3 **Common Elements.** The Common Elements shall be owned in common by all of the Owners of the Units and shall remain undivided, and no Owner shall bring any action for partition or division of the Common Elements. Nothing contained herein shall be construed as a limitation of the right of partition of a Condominium Unit between the Owners thereof, but such partition shall not affect any other Condominium Unit.

Section 4.4 **Assignment and Reassignment of Limited Common Elements.** Common Elements not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Association, without the need for a vote of the Owners, upon written application to the Association by the Owner or Owners for whose exclusive use the Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon application, the Association will prepare and execute an amendment to the Declaration assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment will be executed by the Owner or Owners making the application. The allocation or reallocation of Limited Common Elements between or among Units will not be altered without the consent of the Unit Owners whose Units are directly affected.

ARTICLE 5. EASEMENTS

Section 5.1 **Existing Easements.** All easements or licenses to which the Community is presently subject are shown on the Map.

Section 5.2 **Owner's Easement Across Common Elements.** Every Owner shall have a right and easement for ingress to and egress from such Owner's Unit over and across the Common Elements, which easement shall be appurtenant to and shall pass with the title to every Unit.

Section 5.3 **Easements Reserved.** Easements and rights of way are reserved on, over and under the Common Elements and the Units as shown on the Map, for construction, maintenance, repair, replacement and reconstruction of poles, wires, pipes and conduits for lighting, heating, electricity, gas, telephone, drainage and any other public or quasi-public utility service purposes, and for sewer and pipes of various kinds.

Section 5.4 **Encroachments.** If any portion of the Common Elements encroaches upon a Unit or Units, or if any portion of a Unit encroaches upon the Common Elements or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance shall not be considered or determined to be encumbrances either on the Common Elements or on the Units for purposes of marketability of title or other purposes.

Section 5.5 **Entry Easement for Association and Owners.** Each Owner will afford to the Association and other Owners, and to their agents or employees, access through the Owner's Unit reasonably necessary to allow the Association or other Owners to fulfill their respective maintenance, repair and replacement obligations. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements or any Unit through which access is taken, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair.

ARTICLE 6. LIMITATION ON MECHANIC'S LIEN RIGHTS AND INDEMNIFICATION

Section 6.1 **Common Elements and Other Units Protected.** No labor performed or materials furnished and incorporated in a Unit with the consent or at the request of the Unit Owner or his or her agents or contractors shall be the basis for filing of a lien against the Common Elements or against the Unit of any other Unit Owner who did not expressly consent to or request the services or materials.

Section 6.2 **Mechanic Lien Indemnifications.** Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners from and against all liability arising from the claim of any lien

against the Unit of any other Owner or against the Common Elements for construction performed or for labor, materials, services or other projects incorporated in an Owner's Unit at such Owner's consent or request. The indemnity contained in this paragraph includes all of an Owner's or the Association's costs, reasonable expenses and reasonable attorney's fees incurred or expended in addressing or defending against any such lien claim.

ARTICLE 7. MAINTENANCE

Section 7.1 **Common Elements and Limited Common Elements.** Except as otherwise provided in Section 7.8 below, the Association shall maintain, repair, replace and improve, as a Common Expense, all of the Common Elements, including any Limited Common Elements, but excluding any improvement made to a Limited Common Element by the Owner or the Owner's predecessor. This responsibility will include:

- (a) the Buildings (including the foundations, attics and crawl spaces) and the land (including the land lying beneath the Buildings);
- (b) siding on the exterior of the Buildings;
- (c) roofs, roof decking, roof trusses, gutters and downspouts;
- (d) patios and decks appurtenant to the Units;
- (e) balcony decking and balcony railings appurtenant to the Units, including all structural components of the balcony;
- (f) the common driveways, parking areas, sidewalks, stairs, fences, any maintenance shed(s) or facilities, the irrigation system and landscaping, and community signage;
- (g) removing snow, leaves and debris from all Common Element walkways and entrances.

Section 7.2 **Exterior Windows and doors.**

- (a) Except as otherwise provided below or elsewhere in this Declaration, the Association shall maintain, repair and replace the exterior windows and doors.
- (b) The Association shall repair or replace exterior windows and/or doors if such repair or replacement is necessary as a part of the Association's general maintenance or is a result of a covered cause of loss under the Association's insurance policies.
- (c) The Unit Owner shall repair or replace exterior windows and/or doors if such repair or replacement is necessary as a result of the negligence, accident, intentional misconduct, abuse or other act of the Owner, the Owner's family, tenants and/or guests of the Owner.
- (d) A Unit Owner may upgrade windows and/or doors at the Owner's expense, provided the Owner has received the approval of the Association for the proposed upgrade.
- (e) Screens for exterior windows and doors shall be maintained by the Unit Owners.

Section 7.3 **Snow Removal and Clearing.** Snow removal and maintenance of the Community's rights-of-way for ingress and egress and the parking areas shall be the responsibility of the Association. Snow removal of the common area walkways and stairways shall also be the responsibility of the Association. The Association will contract with snow removal service providers requiring plowing and

clearing of common area walks and stairs.

Section 7.4 **Condominium 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, including, without limitation, those items described in Section 2.2(c) of this Declaration. This maintenance responsibility includes the responsibility to maintain, repair, replace or improve the following:

(a) Unit Owners shall be responsible for removing snow, leaves and debris from patios and balconies designated as Limited Common Elements appurtenant to their Unit;

(b) With respect to water heaters, boilers, toilets, sinks, stoves and other appliances or systems in the Unit that contain fluids or gasses, and all pipes or other connections related to such items from the point where the lines or pipes enter the Unit, each Unit Owner is charged with the responsibility of regularly inspecting and maintaining such items so that they do not leak fluids or gasses that are likely to cause damage to the Common Elements and/or to any other Unit. In the event a fluid or gas leak originating in any Unit causes damage to any of the Common Elements and/or to any other Unit, the Owner of the Unit from which the leak originated shall be liable for all costs to restore the Common Elements and/or any injured Owner's Unit in at least the same condition as existed before the leak; and

(c) The materials making up the finished surfaces of the walls, floors and ceilings, including but not limited to plaster, drywall, paneling, wallpaper, paint, wall and floor tile, carpet and flooring (but not including the sub-flooring in the lowermost floor of the Unit).

Section 7.5 **Additional Owner Responsibilities.** In addition to Section 7.4 above, each Owner is responsible for the following:

(a) storage areas appurtenant to the Unit;

(b) any improvement or upgrades to the Unit and/or the Limited Common Elements appurtenant to the Unit made by the Owner of the Owner's predecessor. Each Owner is responsible for determining what improvements have been made to the Unit and/or associated Limited Common Elements by any predecessor-in-interest;

(c) to keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit;

(d) performing his or her responsibility in a manner so as not to unreasonably disturb other persons in other Units;

(e) promptly reporting to the Association or its managing agent any defect or need for repairs, for which the Association is responsible; and

(f) repairing any incidental damage to another Unit or the Common Elements resulting from performance of work that is the Owner's responsibility. Such repair and subsequent cleaning will be performed based upon a reasonableness standard.

Section 7.6 **Failure of a Unit Owner to perform maintenance responsibilities.** In the event any Unit Owner fails to maintain his or her Unit as provided above, the Association may, but shall not be required to, perform such maintenance, and if so performed by the Association, the costs thereof shall be chargeable to the Unit Owner who has failed to perform such maintenance responsibilities and shall create a lien upon such Unit on behalf of the Association until the full amount of the costs are paid with statutory interest.

Section 7.7 **Right of Access.**

(a) Any person authorized by the Board shall have the right of entry to all portions of the Community for the purpose of performing inspections, repairs or other work reasonably necessary for the proper maintenance of the Community, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment. Except in an emergency situation, entry into Units shall be only during reasonable hours and after reasonable notice to the Owner or resident of the Unit.

(b) In case of an emergency, 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. For purposes of this section, an emergency justifying immediate entry into a Unit shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. The failure to exercise the easement rights in the event of emergency, security, or safety purposes does not create liability to the Association, it being agreed that no duty to enter a Unit for such purposes exists.

(c) All Unit Owners are required to provide a key or door code to the Association management at all times to provide access as needed and to permanently leave those keys on file. Any changes to door codes or keys must be delivered to the Association within forty-eight (48) hours. If current access has not been provided, the cost to obtain access shall be payable by the Unit Owner.

Section 7.8 **Repairs Resulting from Negligence, Accident, Misuse or Other Act.** Each Unit Owner shall reimburse the Association and/or any other Unit Owner for any damage to the Common Elements and/or to any other Unit caused by the negligence, accident, misuse, or other act resulting in damage to the Common Elements or any other Unit, including without limitation such Owners failure to properly maintain, repair or make replacements to such Unit Owner's Unit. The Association will be responsible for damage to Units caused by the Association's intentional or negligent acts, including the Association's failure to reasonably maintain, repair or make replacements to the Common Elements.

Section 7.9 **Liability for Damage.** The Association will repair incidental damage to any Unit resulting from performance of work that is the Association's responsibility. The Association will not be liable for injury or damage to persons or property caused by the elements or by any Owner, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association will not be liable to any Owner, or any Owner's resident, guest or family member for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this article where the damage or injury was not the foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the Association's responsibility, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

ARTICLE 8. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 8.1 **Purpose of Assessment.** The Association has the power to levy assessments. The assessments for Common Expenses are used to fulfill the Association's obligations pursuant to this Declaration and to promote the common benefit and enjoyment of the Owners and residents in the Community as may be more specifically defined and authorized from time to time by the Association.

Section 8.2 **Apportionment of Common Expenses.** All Common Expenses shall be

assessed against all Units equally in accordance with each Unit's Allocated Interest.

Section 8.3 **Personal Liability of Unit Owners.** Each Owner is deemed to covenant and agree to pay the Association: (a) annual assessments or charges; (b) special assessments, and (c) specific unit assessments which are established pursuant to the terms of this Declaration. Personal liability for assessments shall not pass to a successor in title to the Unit unless the successor expressly assumes the obligation.

Section 8.4 **Specific Unit Assessments.** The Association has the power to levy specific unit assessments against Units pursuant to this section as it deems appropriate.

(a) Any expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against that Unit.

(b) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.

(c) An assessment to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered, in proportion to their Allocated Interests.

(d) Any expense or liability incurred by the Association as a result of the negligent, willful or wrongful act of an Owner or such Owner's family, guests and/or invitees, or any breach by any of these parties of any provisions of the Governing Documents, may be an assessment against that Unit.

(e) Any expense associated with the maintenance, repair, or replacement of a Limited Common Element may be assessed against the Unit(s) to which that Limited Common Element is assigned, equally or in any other equitable proportion as determined by the Association.

(f) Any expense related to utilities, including but not limited to water, sewer, gas and electricity, may be specifically assessed equitably among the Units in proportion to use rather than equally, if use can be reasonably determined or estimated through means such as, but not limited to, separate metering or evaluation by an independent entity with expertise in making these determinations.

Section 8.5 **Delinquent Assessments.** All assessments and related charges not paid on or before the due date will be delinquent, and the Owner will be in default.

(a) If the annual assessment, any part or installment thereof or any other fine, special assessment or charge is not paid in full within ten days of the due date, or any later date as may be set forth in the Association's collection policy:

(i) a late charge in an amount set forth in the Association's collection policy may be imposed without further notice or warning to the delinquent Owner;

(ii) interest at the rate set forth in the Association's collection policy, not to exceed the maximum amount permitted by Colorado law, may be imposed without further notice or warning to the delinquent Owner; and

(iii) upon 30 days written notice to the Owner, the Association may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner loses the privilege of paying any and all assessments and charges in installments for that fiscal year, unless the privilege is otherwise reinstated in the Association's sole discretion.

(b) If assessments, fines or other charges, or any part thereof, remain more

than 90 days after the assessment or payment first becomes due, the Owner's right to vote will be automatically suspended until all amounts owed are paid in full.

(c) The Association is hereby granted and shall have a lien on a Unit for all assessments levied against the Unit or fines imposed against its Unit Owner. Fees, charges, late charges, attorney fees, fines and interest charged pursuant to the Act and the Governing Documents are enforceable as assessments under this Article. If a Common Expense assessment is payable in installments, each installment is a lien from the time it becomes due.

(d) The Association's lien has the priority set forth in the Act. Every Owner waives all federal and state homestead or other exemptions with respect to the Association's lien for Common Expense assessments.

(e) Recording of this Declaration constitutes record notice and perfection of the Association's lien; however, the Association has authority to record a notice of lien in the Eagle County, Colorado real property records evidencing the lien created under this Declaration and the Act.

(f) This section does not prohibit any other form of legal action to recover sums for which this section creates a lien, nor prohibit the Association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section shall include costs and reasonable attorney fees for the prevailing party, which in the Association's case shall be additional Common Expense assessments. A judgment or decree in an action brought under this section is enforceable by execution under Colorado law.

(h) The Association's lien may be foreclosed by the same judicial procedure by which a mortgage or first deed of trust is foreclosed under Colorado law. The Association's foreclosure or attempted foreclosure of its lien will not be deemed to preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment or related charges, or monthly or other installments thereof, which are not fully paid when due. The Association has the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same.

(i) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments or other charges, the court may appoint a receiver for the Unit who shall collect all sums due from that Unit Owner or a tenant of the Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's periodic installments of the annual assessments, based on the Association's periodic budget. Notwithstanding the foregoing, if any Owner is in arrears or default in the payment of assessments, the Association shall have the power and authority to direct any tenant or renter of such Owner to pay all rent and any other amounts due to the Owner under any lease or rental agreement directly to the Association so long as there remains any overdue or unpaid assessments on the part of such Owner.

(j) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied first to post-judgment attorney fees, costs and expenses, then to costs and attorney fees not reduced to a judgment, then to interest, then to fines and other charges permitted under this Declaration, and then to the oldest balance due.

Section 8.6 **Budget Adoption and Ratification.** Prior to the beginning of each fiscal year, the Association will prepare a budget covering the estimated costs of operating the Community during the coming year, including an annual reserve contribution for replacement of property or Improvements that is the Association's responsibility, and establish the annual assessment or installments for the coming year. The Association will cause a summary of the budget to be delivered to each Owner within 90 days after

adopting the budget and set a date for a meeting of the Owners to consider the budget, which meeting will occur within a reasonable time after delivery of the budget summary. The budget and assessment will become effective unless disapproved at a duly called Association meeting by a majority of the Owners present, in person or by proxy, at the meeting; provided, however, if a quorum is not obtained at the annual or other meeting called to ratify the budget, the budget will become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Association fails for any reason to determine the budget for the succeeding year, then and until a new budget is determined, the budget in effect for the current year will continue for the succeeding year. In such case, the Association may propose a new budget at any time during the year. The approval procedure set forth in this section for budgets will also apply to a new budget proposed by the Association.

Section 8.7 **Certificate of Payment of Common Expense Assessments**. The Association, upon written request, shall furnish a Unit Owner with a written statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within 14 calendar days after receipt of the request and is binding on the Association, the Board and each Unit Owner. A reasonable fee, established by the Board, may be charged for such statement. If no statement is furnished to the Owner, then the Association will have no right to assert a lien upon the Unit for unpaid assessments which were due as of the date of the request.

Section 8.8 **Payment of Common Expenses**. All Common Expenses assessed under this Declaration shall be due and payable on the dates as may be determined by the Board. The Board may send periodic statements for dues. However, the omission or failure to fix the assessment or deliver a statement for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the same.

Section 8.9 **No Waiver of Liability for Common Expenses**. No Unit Owner may become exempt from liability for payment of the Common Expense assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the Common Expense assessments are made.

Section 8.10 **Special Assessments**. In addition to the annual assessment provided for above, the Association may, at any time, and in addition to any other rights it may have, impose a special assessment against all Owners for maintenance of the existing Common Elements and/or capital alterations or improvements, subject to the following:

(a) If the Association desires to impose an aggregate special assessment of \$300,000 or less in any fiscal year, such special assessment must be approved by a majority of the Owners present, in person or by proxy, at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

(b) If the Association desires to impose a special assessment of more than \$300,000 but not exceeding \$900,000 in the aggregate in any fiscal year, such special assessment must be approved by a majority of the total Association vote at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

(c) If the Association desires to impose a special assessment of more than \$900,000 in the aggregate in any fiscal year, such special assessment must be approved by at least 67% of the total Association vote at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

(d) The limitation on special assessments set forth in this section shall not apply to emergency maintenance of the existing Common Elements or Limited Common Elements. Emergency maintenance is defined as such maintenance that the Board deems necessary and

appropriate to avoid strong likelihood of causing imminent harm or detriment to the Common Elements or Limited Common Elements and Owners' use or benefit thereof. Notwithstanding, if an emergency maintenance special assessment is imposed in a fiscal year, an additional special assessment for that fiscal year cannot be imposed if the total special assessments would exceed the limitations in this section, unless the amounts exceeding those limitations are approved in the same manner as provided above.

(e) Special assessments may be payable in installments, as determined by the Association, and/or may provide a discount for a lump sum payment.

Section 8.11 **Borrowing.** The Association has the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, subject to the following restrictions and limitations:

(a) Loans to the Association of \$300,000 or less must be approved by the affirmative vote of a majority of the Owners present, in person or by proxy, at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

(b) Loans to the Association of more than \$300,000 but not exceeding \$900,000 must be approved by a majority of the total Association vote at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

(c) Loans to the Association of more than \$900,000 must be approved by at least 67% of the total Association vote at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

ARTICLE 9. INSURANCE

Section 9.1 **Association Insurance.** The Association shall obtain and maintain insurance policies in compliance with the provisions of C.R.S. §38-33.3-313 and other applicable provisions of the Act, and this Declaration.

Section 9.2 **Association's Property Insurance.**

(a) The Association will obtain and maintain at all times, as a Common Expense, property or casualty insurance as required under this Declaration and applicable law, as amended from time to time.

(b) The Association's insurance policy on the Units will be a "bare walls" policy. The policy is to rebuild the Building structures, including all portions of the Common Elements.

(c) The Association's "bare walls" policy will exclude the finished surfaces of perimeter and partition walls (between adjoining Units), floors, and ceilings within the Unit (including, but not limited to, wallpaper, paneling, other wall coverings and window coverings, tile, carpet and any other floor covering). The Association's policy will also exclude all cabinetry, fixtures, interior appliances and improvements and betterments to Units made by Owners.

(d) The Association's insurance policy will include coverage for pipes, ducts, lines, and utilities within the Common Elements, up to the point where the pipe, duct, line or utility enters the Unit.

(e) The Association has the right to increase the level of coverage from the standard outlined in this section through a Board resolution. If the level of coverage is changed, the Association will make such information available to all Owners by posting the information on the Association's website, if any, or by other written correspondence to the Owners.

(f) All property insurance purchased by the Association will run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgage Holders, and all other persons entitled to occupy any Unit.

(g) All insurance coverage for the Association will be written in the name of the Association as first named insured and each of the Owners as additional insureds.

(h) The Association will use reasonable efforts to obtain property insurance policies providing "special form" coverage in an amount equal to full replacement cost, before application of deductibles. "Special form" policies offer additional protection to the Association and Owners by providing coverage for a larger number of risks. If "special form" coverage is not available at reasonable cost, the Association may obtain a "broad form" policy, in like amounts. "Broad form" insurance policies provide coverage only for named perils/hazards.

Section 9.3 **Workers' Compensation Insurance.** The Association shall obtain and maintain workers' compensation insurance if necessary to meet the requirements of the laws of the State of Colorado.

Section 9.4 **Directors' and Officers' Liability Insurance.** The Board may obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association, and any other persons as may be specified in the Bylaws. This insurance will have limits determined by the Board.

Section 9.5 **General Liability Insurance.** The Association will obtain, as a Common Expense, general liability insurance in amounts no less than \$1,000,000. The general liability insurance shall contain a cross liability endorsement.

Section 9.6 **Fidelity Insurance.** The Association will obtain and maintain fidelity insurance, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount as required by law, or if no such requirements, consistent with the best business judgment of the Board of Directors.

Section 9.7 **Other Insurance.** The Association may carry other insurance which the Board considers appropriate to protect the Association.

Section 9.8 **Premiums.** Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.

Section 9.9 **Standards for Association Insurance Policies.**

(a) The Association will use reasonable efforts to obtain policies that will provide the following:

(i) Each Owner is an insured person with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association.

(ii) The Insurer waives its rights of subrogation of any claims against Directors, officers, the managing agent, the individual Unit Owners and their respective household members.

(iii) Actions or inactions of individual Unit Owners outside the control of the Association will not void the Association's policy or preclude recovery.

(iv) Ordinance or law coverage, to pay for the increased cost of rebuilding or reconstruction in the event of a loss based on new building codes or requirements, to ensure

that the property, structures and Improvements meet the requirements of current building and construction codes.

(v) Any "other insurance" clause contained in the master policy will expressly exclude individual Unit Owner's policies from its operation.

(vi) The Association's policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Association and all Mortgage Holders, except in instances of nonpayment of premiums, which will require ten days prior written notice.

(vii) The casualty insurance may not contain a "co-insurance" provisions that results in a penalty to the Association in the event that a certain level of coverage is not maintained.

(viii) All insurance policies of the Association will be primary if there is other insurance in the name of the Unit Owner.

(b) All policies of insurance will be written with a company licensed to do business in the State of Colorado.

(c) Exclusive authority to adjust losses under the Association's policies is vested in the Association's Board of Directors, subject to applicable law. No Mortgage Holder having an interest in a loss may be prohibited from participating in settlement negotiations.

(d) Insurance carried by the Association as a Common Expense is not required to include any part of a Unit that is not depicted on the Map.

(e) The Association's policy will not include liability insurance for Unit Owners for liability arising within the Unit.

Section 9.10 Insurance Deductibles.

(a) In the event of an insured loss, any required deductible on the Association's policy will be considered a maintenance expense to be paid by the person or persons who would be responsible for maintenance or for such loss in the absence of insurance.

(b) If the loss affects more than one Unit or a Unit and the Common Elements, the Board may equitably apportion the cost of the deductible among the parties suffering loss in proportion to the total cost of repair.

(c) If the Association's insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner will be responsible for paying the deductible, if any, pertaining to the Unit.

(d) If a loss occurs as a result of the willful, negligent or wrongful act of any Unit Owner (including a breach of the Governing Documents), the Board may equitably assess the cost of the deductible to the Unit Owner.

Section 9.11 Owners Insurance.

(a) Every Unit Owner is required to maintain, at all times, insurance covering those portions of the Unit not insured by the Association, including, but not limited to, finished surfaces (of walls, floors and ceilings), cabinetry, fixtures, and appliances.

(b) Each Unit Owner is responsible for maintaining insurance coverage for all improvements to the Unit, Limited Common Elements, or Common Elements added by the Unit Owner or the Unit Owner's predecessor(s) in title.

(c) Each Unit Owner is responsible for maintaining insurance coverage for personal property and liability arising from conditions or behavior within the Unit.

(d) Unit Owners are encouraged by the Association to obtain and maintain "loss assessment" coverage to pay for the Unit Owner's share of any assessment levied by the Association in the event of a loss or claim that exceeds the liability coverage provided under the Association's policies.

(e) The Association is not liable for the failure of any Unit Owner to maintain required or recommended insurance.

ARTICLE 10. DESTRUCTION, DAMAGE OR OBSOLESCENCE

Section 10.1 **Duty to Restore.** In the event of damage to or destruction of all or any part of the Community for which insurance is required under the Act or this Declaration, the Association will arrange for and supervise the prompt repair and restoration of the structure unless: (a) the Community is terminated; (b) repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety; or (c) at least 80% of the Owners, including every Owner of a Unit or assigned Limited Common Elements that will not be rebuilt, and Mortgage Holders that represent at least 51% of the votes of Units that are subject to mortgages held by Mortgage Holders, vote not to proceed with the reconstruction and repair of the structure.

Section 10.2 **Cost.** The cost of repair or replacement in excess of insurance proceeds and reserves of the Association shall be a Common Expense.

Section 10.3 **Plans and Specifications.** The property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board and a 51% majority of all Unit Owners at a special meeting of the Unit Owners called for that purpose.

Section 10.4 **Replacement of Less Than Entire Property.**

(a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Community.

(b) Except to the extent that other persons will be distributees:

(i) the insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to Mortgage Holders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or Mortgage Holder, as their interests may appear, in proportion to the Allocated Interest of the Units.

(c) If the Unit Owners vote not to repair or rebuild a Unit, the Allocated Interests of the Unit are reallocated for voting and other purposes as if the Unit had been condemned under C.R.S., §38-33.3-107(1), and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 10.5 **Source and Allocation of Insurance Proceeds.** If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in this Declaration, the additional cost will be a Common Expense. If, for any other reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Association, the additional costs will be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment will not be considered a special assessment as provided in this Declaration.

Section 10.6 **Obsolescence.** The Unit Owners may determine to abandon or terminate the Community only if Owners holding at least 80% of the total Association vote give their consent, in person or by proxy at a duly called meeting or by mail ballot without a meeting as provided for in the Bylaws.

ARTICLE 11. CONDEMNATION

If part or all of the Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the Act.

ARTICLE 12. ACQUISITION OF ADDITIONAL PROPERTY

The Association may acquire and hold for the benefit of all Owners, real, tangible and intangible personal property and may dispose of the same by sale or otherwise; provided, however, that the Association may not purchase or acquire additional real property unless affirmatively approved by at least 67% of the total Association vote. The beneficial interest in any such property shall be owned by all Unit Owners in the same proportions as their respective allocated interests, and such interest therein shall not be transferable except with a conveyance of the Owner's Unit. Conveyance of the Unit shall transfer to the grantee ownership of the grantor's beneficial interest in such real or personal property associated with the conveyed condominium Unit.

ARTICLE 13. PARKING

Section 13.1 **Parking Rules.** Parking is subject to the Rules and Regulations adopted by the Board.

Section 13.2 **Parking and Vehicles.** All parking facilities shall be under the control of the Association and shall not be assigned to any particular Unit, except as otherwise provided in this Declaration. Parking spaces may be limited from time to time or eliminated as deemed necessary or proper by the Board of Directors.

ARTICLE 14. RESTRICTIVE COVENANTS

Section 14.1 **Residential Use.** The property is hereby restricted to residential purposes only, and uses related to the convenience and enjoyment of such residential use. No trade or business of any kind may be conducted in or from a Unit or any part of the Community, except that an Owner or his/her tenant may maintain a home office in a Unit if operation of the home office does not involve having any third party come to the Unit or park in the parking facilities of the Community; and provided further that the restriction of business activities shall not apply to the Association in furtherance of its powers and purposes as set forth in this Declaration or other Governing Documents.

Section 14.2 **Leasing or Renting Units.** There are no limitations on an Owner's right to rent or lease their Unit in its entirety for residential purposes.

Section 14.3 **Additional/Accessory Structures.** No subsequent Buildings other than Buildings shown on the Map shall be erected or constructed on the property except by vote of a majority of the Unit Owners; provided, however, that the Association may construct and maintain storage facilities

and other accessory structures for the common use or benefit of the Community.

Section 14.4 **Temporary Structures.** No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used or permitted to be kept or stored on any portion of the premises at any time either temporarily or permanently.

Section 14.5 **Pets.**

(a) No animals, livestock or poultry of any kind shall be raised, bred or kept on the property, except that dogs, cats or other household pets may be kept, subject to Rules and Regulations from time to time adopted and amended by the Association. Only Owners shall be allowed to have pets on the property and each Unit shall be limited to two pets.

(b) No Owner may keep, breed or maintain any pet for any commercial purpose. No structure for the care, housing or confinement of any pet may be constructed or maintained on any part of the Common Elements, including the Limited Common Elements. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements. Feces left by pets upon the Common Elements, Limited Common Elements, or in Units, including the pet owner's Unit, must be removed promptly by the pet owner or other person responsible for the pet.

(c) Any Owner who keeps or maintain any pet within the Community is deemed to have agreed to indemnify and hold the Association, its Directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining the pet within the Community.

Section 14.6 **Signs.** Except as may be required by state law or legal proceedings, no advertising poster, signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on the premises without the Association's prior written consent.

Section 14.7 **Prohibition of Nuisance.**

(a) No nuisances shall be allowed in the Community, nor any use or practice which is the source of annoyance to residents or which unreasonably interferes with the peaceful enjoyment or use of the Community by its residents, nor shall the premises be used in any way or for any purpose which may endanger the health of any Owner or resident. All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard to exist. The Association may adopt Rules and Regulations relative to abatement and enjoinder of nuisances.

(b) Nothing in this section will be construed to affect the rights of an aggrieved Owner or resident to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise will exist by an aggrieved Owner or resident against the Association for failure to enforce the provisions hereof if the aggrieved Owner or resident has not personally pursued all available remedies against the violator for redress provided under Colorado law.

Section 14.8 **Compliance with Laws.** No improper, offensive or unlawful use shall be permitted or made of a Unit, the Community, or any part thereof. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

Section 14.9 **Rules and Regulations.** Rules and Regulations may be adopted by the Board of Directors concerning and governing the use of the Units, Common Elements and Limited Common

Elements; provided, however, that such Rules and Regulations shall be uniform and non-discriminatory. Copies of all such Rules and Regulations shall be furnished to Unit Owners at least thirty (30) days prior to the time that they become effective.

ARTICLE 15. ARCHITECTURAL CONTROLS

Section 15.1 **Architectural Covenants.** No exterior additions, alterations or decorating to any Buildings or Common Elements, nor changes in Unit exteriors shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, heights, materials, and location of same shall have been submitted to and approved in writing by the Association or a committee established by the Board.

Section 15.2 **Architectural Standards.** Interpretation, application and enforcement of the architectural standards may vary as members of the Board or committee change. The standard for approval of architectural requests includes, but is not limited to: (a) aesthetic consideration, (b) materials to be used, (c) compliance with this Declaration, or the design standards which may be adopted by the Association, if any, (d) harmony with the external design of the existing Buildings, Units and structures, and the location in relation to surrounding structures and topography, (e) visibility and location of the proposed modification in the Community, and (f) any other matter deemed to be relevant or appropriate by the Association.

Section 15.3 **Required Action by the Association.** Applications for approval of any architectural modification will be in writing and provide any information as the Association may reasonably require. If the Association fails to approve or to disapprove the application within 45 days after the application and all information as the Association may reasonably require have been submitted, then the Owner submitting the application may issue written notice to the Association president and the Association's managing agent regarding the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten days of receipt of the Owner's notice, the approval will not be required and this section will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this section are satisfied, nothing herein will authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the design guidelines (if any), or the Rules and Regulations of the Association or of any applicable zoning or other laws. The Association is the sole arbiter of the application and may withhold approval for any reason, including purely aesthetic considerations, provided no decision of the Association is arbitrary or capricious.

Section 15.4 **Conditions of Approval.** As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, assumes all responsibilities for maintenance, repair, replacement and insurance of the change, modification, addition, or alteration, unless the Association otherwise agrees in writing. As a further condition of approval, an Owner may be required to execute an agreement setting forth the conditions of approval to be recorded in the Eagle County real property records.

Section 15.5 **Limitation of Liability.** Neither the Association nor its Directors, officers, committee members or agents will bear any responsibility for the design, quality, structural integrity, or soundness of approved construction or modifications, nor for compliance with building codes, zoning regulations, and other governmental requirements. The Association, its Directors, officers, committee members, and agents are not liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction on or to modifications to any Unit. No lawsuit, action or claim may be brought against any of the foregoing for any injury, damage or loss.

Section 15.6 **Variances.** The Association may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Governing Documents in order to overcome practical difficulties and unnecessary hardships with respect to topography, natural obstructions or aesthetic or environmental considerations arising by reason of the application of the conditions and restrictions contained in the Declaration or in any design guidelines, provided that such variance is not materially

detrimental or injurious to other Units or the Common Elements and is based on unique circumstances. All variances must be in writing. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing will not be considered a hardship warranting a variance.

Section 15.7 **Enforcement.** The Association is entitled to stop any construction that does not conform to the approved plans. The Association is further entitled to stop any construction if the Owner fails to submit plans and specifications and/or obtain written approval prior to commencing construction. The Association may require any Owner to remove any Improvement or modification, whether partial or completed, and restore the property to its prior condition, if the Owner fails to obtain prior written approval or constructs in a manner that does not conform to the approved plans. These remedies are in addition to all other remedies available, including the authority to levy a fine.

ASSOCIATION AUTHORITY AND ENFORCEMENT

Section 15.8 **Binding Effect.** The conveyance or encumbrance of a Condominium Unit shall be deemed to include the acceptance of all of the provisions of the Governing Documents and shall be binding upon each grantee or person/entity encumbering any Condominium Unit or part of a Condominium Unit without the necessity of inclusion of such as an express provision in the instrument of conveyance or encumbrance.

Section 15.9 **Compliance Required.** Each Owner and resident shall comply with the provisions of the Governing Documents, as well as the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully adopted and amended from time to time. The Association may enforce all applicable provisions of the Governing Documents and may impose sanctions for violation thereof. Sanctions may include, without limitation:

- (a) imposition of reasonable monetary fines, after notice and opportunity for a hearing, which will be a lien upon the violator's Unit;
- (b) suspension of the right to vote;
- (c) suspension of any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;
- (d) requiring an Owner, at the Owner's expense, to remove any structure or Improvement in the Unit or on the Common Elements in violation of the Governing Documents and to return the Unit or Common Elements to its previous condition and, upon failure of the Owner to do so, the Association will have the right to enter the Unit/Common Elements, remove the violation and restore the Unit/Common Elements to substantially the same condition as previously existing; and
- (e) other remedies provided for in this Declaration or by applicable law.

Section 15.10 **Remedies are Cumulative/Costs Incurred by the Association.** All remedies set forth in the Governing Documents will be cumulative of any remedies at law or in equity. If the Association exercises any of its rights pursuant to this article, all costs will be assessed against the violating Owner or residents and will be a lien against the Unit. Additionally, subject to the Act, the Association will also be entitled to reasonable attorney fees actually incurred, which will be collected as an assessment.

ARTICLE 16. REVOCATION OR AMENDMENT OF DECLARATION

Section 16.1 **Duration and Revocation.** The covenants and restrictions of this Declaration run with the land and bind the Community perpetually unless otherwise terminated in accordance with the

Act.

Section 16.2 **Amendment.** This Declaration and the Map may be amended by the affirmative vote, written agreement, or any combination of affirmative vote and written agreement of Unit Owners to which at least sixty-seven percent (67%) of the votes are allocated. If a proposed amendment will be considered at a Member meeting, notice of the meeting will state the general subject matter of the proposed amendment. No amendment will be effective until certified by the president and secretary of the Association and recorded in the Summit County, Colorado real property records.

Section 16.3 **Limitation of Challenges.** Any action to challenge the validity of an amendment adopted by the Association pursuant to this article may not be brought more than one year after such amendment is recorded.

Section 16.4 **Supermajority Consent.** Except to the extent expressly permitted or required by other provisions of the Act, an amendment may not, absent the consent of at least 80 percent of the votes allocated in the Association: (a) increase the number of Units; (b) change the boundaries of a Unit; or (c) change the allocated interest of a Unit.

ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.1 **Captions.** The captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provision thereof.

Section 17.2 **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 Declaration so requires.

Section 17.3 **Waiver.** No provision contained in this Declaration is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 17.4 **Invalidity.** The invalidity of any provision of this Declaration 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 Declaration shall continue in full force and effect.

Section 17.5 **Conflict.** In the case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation control.

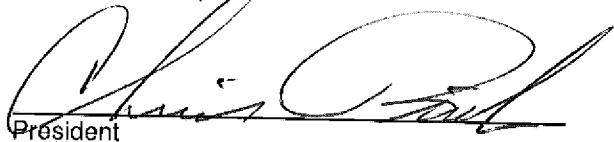
[signatures on following page]

IN WITNESS WHEREOF, the undersigned certifies that the Association has complied with the provisions of § 38.33.3-217 of the Act, and that this Amended and Restated Declaration was duly adopted by the Members of the Association as set forth in the Recitals above.

DATED this 28th day of December, 2016

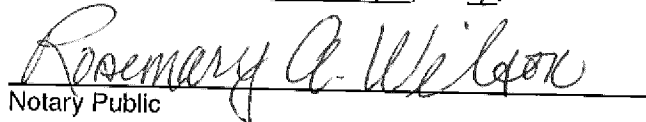
SUN VAIL CONDOMINIUM ASSOCIATION,
a Colorado nonprofit corporation

By:


President

STATE OF Michigan)
COUNTY OF Macomb) ss.

The foregoing Declaration was acknowledged before me by Chris Reik
President of the Association, on this 28 day of December, 2016.


Notary Public

My commission expires: 8-22-18

ROSEMARY A. WILSON
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES AUG. 22, 2018