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CONDOMINIUM DECLARATION
for
THE MILL BUILDING CONDOMINIUM

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**CONDOMINIUM DECLARATION
FOR THE MILL BUILDING CONDOMINIUM**

THIS CONDOMINIUM DECLARATION FOR THE MILL BUILDING CONDOMINIUM is made as of April 28, 2016, by Bleeker Mill Development LLC, a Delaware limited liability company.

RECITALS

This Declaration is made with respect to the following facts:

A. Bleeker Mill Development LLC, a Delaware limited liability company, is the owner of the “**Property**” (as defined in Section 1.1 below).

B. In accordance with the provisions of the Colorado Common Interest Ownership Act, Bleeker Mill Development LLC, desires to create on the Property a condominium common interest community consisting of units designated for separate ownership and common elements designated for ownership in common by the owners of those units.

DECLARATION

NOW, THEREFORE, Bleeker Mill Development LLC, declares as follows:

**ARTICLE 1
DEFINITIONS AND EXHIBITS**

1.1 Definitions. The following capitalized terms will have the respective meanings set forth below:

“**Act**” means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as amended from time to time.

“**Affordable Housing Director**” is defined in Section 6.5.

“**Affordable Housing Units**” means Affordable Housing Units (“AHU”), Unit 1A (located on the First Floor), Units 2A, 2B, and 2C (split levels located on the Second Floor and the Third Floor) in the Building as designated on the Map. The Affordable Housing Units are Residential Units. The term “Affordable Housing Unit” also includes, when the context indicates, the undivided interest in the Common Elements and all Easements, rights, licenses and appurtenances allocated or made appurtenant to each Affordable Housing Unit pursuant to this Declaration.

“**Affordable Housing Parking Spaces**” means Affordable Housing Units (“AHU”) Parking Spaces 1, 2, 3 and 4 in the Building as designated on the Map.

“**Allocated Interests**” is defined in Section 2.10.

“**Articles**” means the Articles of Incorporation filed with the Secretary of State’s office which create the Association, as the same may be amended from time to time.

“**Assessments**” is defined in Article 7.

“**Association**” means the Mill Building Association, Inc., a Colorado nonprofit corporation.

“**At Large Director**” is defined in Section 6.5.

“**Board**” means the Board of Directors of the Association.

“**Building**” means the residential and commercial building constructed on the Property, as depicted on the Map, containing Units and Common Elements.

“**Bylaws**” means the Bylaws of the Association, as the same may be amended from time to time.

“**Casualty**” is defined in Section 10.1.

“**Central Mechanical Equipment**” means all heating, ventilation, air conditioning, plumbing, electrical, mechanical, telecommunications, data transmission, television, security, and fire protection equipment, facilities and systems in the Building, including the Solar Panels associated equipment and wiring, and the Building’s geo-thermal system, that are designed to provide such services and similar services to all of the Units and any of the Common Elements. The Central Mechanical Equipment constitutes a part of the General Common Elements.

“**Claims**” is defined in Section 4.11.

“**Commercial Director**” is defined in Section 6.5.

“**Commercial Owner**” means an Owner of a Commercial Unit.

“**Commercial Parking Spaces**” means the Parking Spaces described in Section 2.7(f).

“**Commercial Units**” means Units 101, 201, 202, and 301 in the Building as designated on the Map. The term “Commercial Unit,” when the context indicates, also includes the Allocated Interests and all Easements, rights, licenses and appurtenances allocated or made appurtenant to such Commercial Unit(s) pursuant to this Declaration.

“**Common Allocation**” means a percentage for each Unit that has been determined as described in Section 2.9. The Common Allocation for each Unit is set forth on Exhibit B.

“**Common Alteration**” is defined in Section 8.5(b).

“**Common Elements**” means all portions of and areas within the Condominium Project, including land and air space, which are not part of the Units. Unless otherwise provided by the Condominium Instruments or the context requires otherwise, reference to the “Common

Elements” include both General Common Elements and Limited Common Elements. A portion of the Common Elements may be referred to as a “Common Element.”

“**Common Regular Expenses**” means, except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to the Condominium Instruments for operating, managing, administering, securing, protecting, insuring, heating, cooling, ventilating, lighting, decorating, cleaning, maintaining, repairing, renewing, replacing and/or restoring (to the extent not covered by insurance or condemnation proceeds), and providing water, sewer, waste disposal, electricity, natural gas and other services, energy and utilities to, the General Common Elements and all of the Units (as opposed to some but not all of the Units), including, without limitation, the Central Mechanical Equipment, and the Association’s personal property and equipment located in, or used in connection with the operation or maintenance of, the General Common Elements; personal property taxes; and funding of working capital and reasonable reserves for expense items that otherwise are or will be Common Regular Expenses as described above. Common Regular Expenses will not include Limited Regular Expenses, Limited Special Expenses, Reimbursable Expenses, the costs of any Restoration Deficit, Voluntary Capital Expenses or any other cost or expense which, pursuant to this Declaration or the Act, is separately assessed against any Unit(s) in addition to Regular Assessments for Common Regular Expenses.

“**Condominium Instruments**” means all of the following as each may be amended from time to time: (i) this Declaration, (ii) the Map, (iii) the Articles, (iv) the Bylaws, (v) the Rules, and (vi) all policies and procedures adopted by the Board from time to time.

“**Condominium Project**” means the condominium common interest community, as defined in Section 38-33.3-103(9) of the Act, created by this Declaration and the Map.

“**Deck**” is defined in Section 2.4(g).

“**Declarant**” means Bleeker Mill Development LLC, a Delaware limited liability company, or any Person designated as a successor to some or all of Declarant’s rights and obligations under this Declaration in a written instrument signed by Declarant that is Recorded in the Records. Notwithstanding the foregoing, Special Declarant Rights may be transferred only in accordance with Section 38-33.3-304 of the Act.

“**Declarant Control Period**” means the period beginning on the date the Association is formed and ending on the first to occur of (i) 60 days after 75% of the total number of Units that may be created pursuant to Section 2.14 have been conveyed to Owners other than Declarant; (ii) two years after the last conveyance of a Unit by Declarant in the ordinary course of business; (iii) two years after any right to create new units pursuant to this Declaration was last exercised; or (iv) the date on which Declarant, in its sole discretion, voluntarily terminates the Declarant Control Period pursuant to a Recorded statement of termination executed by Declarant. If Declarant terminates the Declarant Control Period pursuant to the preceding clause (iv), Declarant may require that, for the balance of what would have been the Declarant Control Period had Declarant not terminated it, certain actions of the Association or the Board, as described in the Recorded statement of termination, be approved by Declarant before they become effective.

“Declarant Development Period” means the period beginning on the date this Declaration is Recorded and ending on the earlier to occur of: (a) the thirtieth (30th) anniversary of the date on which this Declaration is Recorded; or (b) the date on which Declarant (or any successor Declarant) no longer owns any Unit.

“Declaration” means this Condominium Declaration for the Mill Building Condominium as it is amended from time to time in accordance herewith and the Act. Pursuant to the Act, references to the Declaration may also include references to the Map as the context requires.

“Delinquency Costs” is defined in Section 7.3.

“Development Rights” means the rights reserved by Declarant pursuant to Section 2.11 of this Declaration.

“Easements” means all easements which burden or benefit the Condominium Project or a portion of it, including (i) easements established or granted under this Declaration, (ii) easements which first burdened or benefited the Property before the Recording of this Declaration, and (iii) easements which burden or benefit the Property after this Declaration is Recorded.

“Elevator 1” means the elevator in the Building designated as “Elevator #1” on the Map, including all mechanical equipment used in the operation of such elevator. Elevator 1 is a Limited Common Element allocated for the exclusive use of Penthouse Units A, B, C, and D.

“Elevator 2” means the elevator in the Building designated as “Elevator #2” on the Map, including all mechanical equipment used in the operation of such elevator. Elevator 2 is a General Common Element.

“Eligible Holder” means the holder of a First Mortgage who provides a written request for notices to the Association stating the name and address of such holder and the number of the Unit to which its First Mortgage relates.

“Encroachment Improvements” means the improvements associated with the Building that are now located within the Property Boundaries, and are the subject of the Encroachment License with the City of Aspen (“City”) recorded as Reception No. 629177 of the Records, including the public alley improvements located to the north of the Building, a storm pipe connection located at the northeast corner of the Property as shown on the Condominium Map, pavers located in the City right-of-way and all retaining walls and planters located within the City right-of-way, that are designed to provide service to all of the Units and any of the Common Elements. The Encroachment Improvements constitute a part of the General Common Elements.

“Exterior Spiral Stairs” means the exterior spiral staircases located on the Decks of Penthouse Units A and B on the Fourth Floor of the Building as shown on the Map. The Exterior Spiral Stairs from the Fourth Floor to and including the Decks on the Roof of the Building are included in the definition of Penthouse Unit A and Penthouse Unit B, as more particularly shown and described on the Map.

“First Mortgage” means a bona fide mortgage or deed of trust which is Recorded and which is a first lien on the Unit or Units described in it.

“First Mortgagee” means the holder, from time to time, of a First Mortgage on any Unit or Units as shown by the Records, including a purchaser at a foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor’s period of redemption. If there is more than one holder of a First Mortgage, the holders will be treated as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

“Fiscal Year” means the fiscal accounting and reporting period of the Association selected by the Board from time to time.

“Garage” means the sub-grade garage area of the Building in which Parking Spaces 1 through 19, Unit 001 (Storage) and certain other Common Elements and facilities are located.

“General Common Elements” means all Common Elements which are not Limited Common Elements, including those elements of the Building included as part of the “General Common Elements” pursuant to Section 2.4(c) and Section 2.4(d). For example, the Building’s structure, portions of the roof (see the definition of “Green Roof” below), and exterior enclosure systems, the on-site and off-site stormwater improvements, and the Encroachment Improvements are General Common Elements. A portion of the General Common Elements may be referred to as a “General Common Element.” Some of the General Common Elements may be designated on the Map and identified by the initials “G.C.E.” or “GCE”.

“Green Roof” means the green roofs of the Building as shown on the Map and located on the Fourth Floors and the Roof of the Building which are General Common Elements.

“Limited Common Elements” means the portions of the Common Elements allocated to the exclusive use of one or more but fewer than all of the Units. A portion of the Limited Common Elements may be referred to as a “Limited Common Element.” Some of the Limited Common Elements may be designated on the Map and identified by the initials “L.C.E.” Some of the Limited Common Elements may also be identified on the Map with respect to the Unit or Units to which those Limited Common Elements are allocated.

“Limited Regular Expenses” means, except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws for operating, managing, administering, securing, protecting, insuring, heating, cooling, ventilating, lighting, decorating, cleaning, maintaining, repairing, renewing, replacing and/or restoring (to the extent not covered by insurance or condemnation proceeds), and providing water, sewer, waste disposal, electricity, natural gas and other services, energy and utilities to, any Limited Common Elements and/or one or more but less than all of the Units, including, without limitation, the Association’s personal property and equipment located in, or used in connection with the operation or maintenance of, a particular Limited Common Element; and funding of working capital and reasonable reserves for expense items that otherwise are or will be Limited Regular Expenses as described above. Limited Regular Expenses will not include Common Regular Expenses, Limited Special Expenses, Reimbursable Expenses, the costs of any Restoration Deficit, Voluntary Capital Expenses or any other cost or

expense which, pursuant to this Declaration, is separately assessed against any Unit(s) in addition to Regular Assessments for Limited Regular Expenses.

“**Limited Special Expenses**” is defined in Section 7.2(b).

“**Lobby**” means the Limited Common Area on the First Floor of the Building labeled on the Map as “Lobby L.C.E. PH A, B, C and D.”

“**Maintenance Standard**” is defined in Section 5.1(a).

“**Map**” means the Mill Building Condominium Map, which is being Recorded by the City of Aspen and upon recording is made a part of this Declaration by reference, as such condominium map may be amended in accordance with this Declaration and the Act.

“**Mold**” is defined in Article 12.

“**Owner**” means a Person or Persons, including Declarant, owning fee simple title to a Unit from time to time. The term Owner includes a contract vendee under an installment land contract; but does not include the vendor under such a contract or a Security Holder (unless and until a Security Holder becomes an owner in fee simple of a Unit).

“**Parking Space**” means each of the nineteen (19) individual vehicle parking spaces located in the Garage of the Building and as designated on the Map.

“**Penthouse Director**” is defined in Section 6.5.

“**Penthouse Parking Spaces**” means Parking Spaces as described in Section 2.7(e).

“**Penthouse Units**” means: (i) Penthouse Units A and B on the Fourth Floor including the associated Decks on the Fourth Floor, Exterior Spiral Stairs and Decks on the Roof, and (ii) Penthouse Units C and D including the associated Decks on the Third Floor of the Building as designated on the Map. The Penthouse Units are Residential Units. The term “Penthouse Unit” also includes, when the context indicates, the undivided interest in the Common Elements and all Easements, rights, licenses and appurtenances allocated or made appurtenant to each Penthouse Unit pursuant to this Declaration. The Penthouse Units are also referred to on the Map as Penthouse A, B, C and/or D or as PH A, B, C and/or D.

“**Permitted Commercial Activities**” is defined in Section 15.1.

“**Permitted Unit Alteration**” is defined in Section 8.1.

“**Permittee**” means a Person, other than an Owner, rightfully present on or in rightful possession of a Unit or Common Element, or a portion of a Unit or Common Element, including, without limitation, (i) a tenant of an Owner or the Association or (ii) an agent, employee, customer, contractor, licensee, guest or invitee of an Owner or the Association.

“**Person**” means a natural person, corporation, partnership, limited liability company, trust or other entity, or any combination of them.

“Property” means the real property located in the City of Aspen, Colorado, and legally described on Exhibit A, and the Building (including both Units and Common Elements) and all improvements on and appurtenances to such property.

“Records” means the real property records of the County of Pitkin, Colorado; to **“Record”** or **“Recording”** means to file or filing for recording in the Records; and **“of Record”** or **“Recorded”** means recorded in the Records.

“Regular Assessments” is defined in Section 7.1.

“Reimbursable Expenses” is defined in Section 7.2(c).

“Reserve Fund” is defined in Section 6.9(a).

“Residential Director” is defined in Section 6.5.

“Residential Owner” means an Owner of a Residential Unit.

“Residential Units” means the Penthouse Units and the Affordable Housing Units in the Building. The term **“Residential Unit”** also includes, when the context indicates, the undivided interest in the Common Elements and all Easements, rights, licenses and appurtenances allocated or made appurtenant to each Residential Unit pursuant to this Declaration and the Map.

“Restoration Deficit” is defined in Section 7.2(d).

“Restrooms” means the restrooms located on the Second Floor of the Building as designated on the Map. The Restrooms shall constitute a part of the General Common Elements.

“Rules” means the rules and regulations that the Association may adopt from time to time pursuant to Section 4.10.

“Security for an Obligation” means the vendor’s interest in an installment land contract, the mortgagee’s interest in a mortgage, the beneficiary’s interest in a deed of trust, the purchaser’s interest under a sheriff’s certificate of sale during the period of redemption, or the holder’s or beneficiary’s interest in a lien.

“Security Holder” means any Person owning or holding a Security for an Obligation encumbering a Unit.

“Solar Panels” means the solar panels and associated equipment and wiring on Roof of the Building as designated on the Map, including any replacements thereof. The Solar Panels shall be General Common Elements.

“Storage Unit” means Unit 001 (Storage) and Unit 102 (Storage) in the Building as designated on the Map.

“Special Assessments” is defined in Section 7.2.

“**Special Declarant Rights**” means the rights reserved by Declarant pursuant to Section 2.12.

“**Termination Agreement**” is defined in Section 11.1.

“**Termination Allocation**” is defined in Section 11.3.

“**Transferee**” is defined in Section 14.3(a).

“**Unit**” means a portion of the Condominium Project designated for separate ownership, together with the Allocated Interests. Each Unit is designated for separate ownership in this Declaration and its boundaries are delineated on the Map and described in this Declaration. The definition of “Unit” excludes all Common Elements, including, without limitation, (a) any Limited Common Elements allocated, exclusively or otherwise, to any Unit, and (b) any Common Elements passing through or existing partly inside and partly outside the boundaries of any Unit (e.g., any columns, beams, floor slabs or other structural elements, or any ducts, pipes flues, wires, chases or equipment serving portions of the Condominium Project other than the Unit).

“**Unit Mechanical Equipment**” means the mechanical equipment that exclusively serves a single Unit. Unit Mechanical Equipment is a part of the Unit that it serves.

“**Utility/Service Elements**” is defined in Section 2.4(d).

“**Voluntary Capital Expenses**” is defined in Section 7.2(e).

1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration:

- Exhibit A - Legal Description of the Property
- Exhibit B - Common Allocations and Votes
- Exhibit C - Other Title Matters Affecting the Property

ARTICLE 2

CREATION OF THE CONDOMINIUM PROJECT; UNITS AND ALLOCATIONS

2.1 Creation. Declarant declares that, upon the Recording of this Declaration and the Map executed pursuant to the Act, the Property will be a “condominium” within the meaning of Section 38-33.3-103(9) of the Act and, thus, constitutes the Condominium Project.

2.2 Name. The name of the Condominium Project is the “Mill Building Condominium.”

2.3 Division of Property. Declarant, pursuant to the Act, hereby divides the Property into the Units (identified by number on Exhibit B and depicted on the Map) and the Common Elements and designates the Units for separate ownership and the Common Elements for common ownership solely by the Owners.

2.4 Designation of Boundaries. The vertical and horizontal boundaries of each of the Units are described below and are graphically depicted on the Map:

(a) Horizontal Boundaries. The upper horizontal boundary of each Commercial Unit or Storage Unit is the unfinished surface of the bottom of the floor slab immediately above such Unit. The upper horizontal boundary of each Residential Unit is the underside of the unfinished ceiling of such Residential Unit. The lower horizontal boundary of each Unit is the unfinished surface of the top of the floor slab immediately beneath the Unit.

(b) Vertical Boundaries. With respect to each vertical boundary line of a Unit depicted on the Map that is coincident with a framed wall in the Building, such vertical boundary line is the unfinished interior surface of such framed wall, as extended across the threshold of any windows or doors located within such wall. With respect to each vertical boundary line of a Unit depicted on the Map that is coincident with any masonry, concrete, cement or similar wall in the Building, such vertical boundary line is the unfinished interior surface of such wall. With respect to each vertical boundary line of a Unit depicted on the Map that is not coincident with a vertical element of the Building, such vertical boundary shall be the line depicted as such on the Map. Notwithstanding that any wallboard, plasterboard or other materials which form part of any required, rated fire-separation assembly may be a part of a Unit, no Owner may remove, penetrate or do anything to otherwise impair the fire-separation capability of such materials or assemblies.

(c) Structural Elements. All structural elements of the Condominium Project, including, without limitation, bearing walls, bearing columns, structural slabs and decks for floors, ceilings or roofs, structural girders, beams and joists, and foundations and footings, regardless of whether they are located wholly or partially within the boundaries of any Unit, are General Common Elements.

(d) Utility/Service Elements. Any shafts, chutes, flues, ducts, vents, chases, pipes, wires, conduits or utility lines (collectively, “**Utility/Service Elements**”) located completely within and that exclusively serve a single Unit are a part of the Unit. Any Utility/Service Elements that exclusively serve a single Unit but that are not located entirely within such Unit are Limited Common Elements allocated to the exclusive use of such Unit. Any Utility/Service Elements that serve more than one but fewer than all of the Units are Limited Common Elements allocated to the Unit(s) they serve (e.g., any Utility/Service Elements that serve the Residential Units, but not the Commercial Units, are Limited Common Elements for the Residential Units). Any Utility/Service Elements that exclusively serve a Common Element are a part of that Common Element. Any Utility/Service Elements that serve all of the Units are General Common Elements.

(e) Improvements in Unit. Subject to Sections 2.4(c) and 2.4(d) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of any Unit are a part of the Unit. Without limiting the foregoing, each Unit includes its Unit Mechanical Equipment.

(f) Penetrations. Where a Unit boundary is penetrated by an opening e.g., a window, door, skylight (if any), or a flue or chase), the Unit boundary is the surface which would result from the extension of the nearest adjacent surface comprising the Unit boundary that is penetrated by the opening (but subject to Section 2.7(h) below).

(g) Exterior Spiral Stairs and Decks. The Decks associated with Penthouse Units A and B on the Fourth Floor of the Building, the Exterior Spiral Staircases and the Decks on the Fourth Floor of the Building as shown on the Map, are parts of Penthouse Units A and B. The Decks associated with Penthouse C and D on the Third Floor of the Building as shown on the Map, are parts of Penthouse C and D. The costs and expenses for cleaning, maintaining, repairing, replacing and improving each Deck shall be the expense of the Unit Owner.

(h) Green Roof. The Green Roof shown on the Map on the Fourth Floor and the Roof are General Common Elements. No improvements are allowed to be constructed within the airspace above such Green Roof that would violate any applicable height restriction or land-use approval affecting the Building.

2.5 Floor Area Disclaimer. Different methodologies are available for measuring the floor area of residential and commercial space, and different professionals within the real estate industry may utilize different methodologies for different purposes. For example, an architect may measure floor area differently than a real estate broker. And a surveyor may use a different methodology when measuring floor area based on the legal boundaries of a condominium unit. By accepting title to a Unit, each Owner acknowledges and agrees that the floor area of his or her Unit based on the legal boundaries of the Unit may be different than the floor area of the Unit as calculated for marketing, leasing and other purposes. Each Owner also acknowledges and agrees that he or she has not relied on the stated floor area of his or her Unit as contained in any marketing or other materials supplied by Declarant or any of its sales agents (including without limitation in any MLS listing) in deciding whether to purchase the Unit or how much to pay for the Unit. To the extent the floor area of a Unit is an important consideration to any prospective Owner, such Person is advised and encouraged to obtain an independent measurement of the floor area of the Unit using whatever measurement methodology preferred by such Person. Each Owner, by taking title to a Unit, hereby waives and releases any claim against Declarant and any affiliate of Declarant based on any difference between the floor area for his or her Unit as measured pursuant to the legal boundaries of the Unit defined in this Declaration and the Map and the floor area of such Unit as described in any marketing or other materials prepared by Declarant or its sales agents or any floor area measurement obtained independently by the Owner.

2.6 Unit Subdivisions. No Residential Unit may be subdivided into additional Residential Units. A Commercial Unit may be subdivided into more than one Commercial Unit provided that there is no increase in the net leasable commercial/office space. A Storage Unit may be subdivided into more than one Storage Unit.

2.7 Limited Common Elements. Limited Common Elements are designated for the exclusive use of one or more but less than all Units but are not included as part of the Units to which they are appurtenant. The Limited Common Elements consist of those designated in the

Act, those designated in Section 2.4(d), those designated by the Board or the Declarant pursuant to this Declaration, those designated “LCE” or otherwise allocated on the Map, and the following:

(a) Parking Space 2. Parking Space 2 is a Limited Common Element allocated for the use of Unit 1A.

(b) Parking Space 3. Parking Space 3 is a Limited Common Element allocated for the use of Unit 2A.

(c) Parking Space 4. Parking Space 4 is a Limited Common Element allocated for the use of Unit 2B.

(d) Parking Space 5. Parking Space 5 is a Limited Common Element allocated for the use of Unit 2C.

(e) Penthouse Parking Spaces. Up to 8 of the 19 Parking Spaces shown on the Map shall be Penthouse Parking Spaces, which are Limited Common Elements allocated for the use of the Penthouse Units. During the Declarant Development Period, Declarant shall have the right to designate Penthouse Parking Space(s) as a Limited Common Element for a specific Penthouse Unit by the Recording of one or more written instruments making such designation. A Penthouse Parking Space that has been allocated to a particular Penthouse Unit pursuant to the preceding sentence may be reallocated to a different Penthouse Unit either by (i) Declarant by the Recording of a written instrument amending the prior allocation of such Penthouse Parking Spaces by Declarant; or (ii) the Owners of the affected Penthouse Units pursuant to Section 8.2.

(f) Commercial Parking Spaces. Up to 7 of the 19 Parking Spaces shown on the Map shall be Commercial Parking Spaces, which are Limited Common Elements allocated for the use of the Commercial Units. During the Declarant Development Period, Declarant shall have the right to designate any Commercial Parking Space as a Limited Common Element for a specific Commercial Unit by the Recording of one or more written instruments making such designation. A Commercial Parking Space that has been allocated to a particular Commercial Unit pursuant to the preceding sentence may be reallocated to a different Commercial Unit either by (i) Declarant by the Recording of a written instrument amending the prior allocation of such Commercial Parking Spaces by Declarant; or (ii) the Owners of the affected Commercial Units pursuant to Section 8.2. The leasing of a Commercial Unit by the Owner of such Commercial Unit shall not automatically convey or include the right of the lessee to use any Commercial Parking Space allocated to such Commercial Unit; the lessee of a Commercial Unit shall have the right to use any Commercial Parking Space allocated for the use of such Commercial Unit only to the extent expressly provided in such lessee’s lease with the Owner of the Commercial Unit.

(g) Elevator 1. Elevator 1 is a Limited Common Element allocated for the use of Penthouse Units A, B, C and D. The costs and expenses incurred by the Association in

cleaning, maintaining, repairing, replacing and improving Elevator 1 shall be Limited Regular Expenses borne by the Owners of Penthouse Units A, B, C and D.

(h) Doors and Windows. All doors and windows in the boundary walls of a Residential Unit or a Commercial Unit are Limited Common Elements allocated to the Residential Unit or Commercial Unit. The glazing, sashes, frames, sills, thresholds, hardware, flashing and other components of those doors and windows are parts of the doors and windows and are allocated as Limited Common Elements pursuant to this Section 2.7(l). The costs and expenses incurred by the Association in cleaning, maintaining, repairing, replacing and improving such doors and windows and all related hardware, fixtures and improvements shall be borne by the Residential Owners in proportion to their Common Allocations.

2.8 General Common Elements. The General Common Elements are reserved for the use of all Owners. The General Common Elements include, without limitation, the Green Roof on Roof of the Building, the Solar Panels on Roof of the Building, the Encroachment Improvements, all common areas that are not otherwise labeled Limited Common Element, and all utility, mechanical and similar rooms in the Building that contain any Central Mechanical Equipment. Though the utility, mechanical and similar rooms, and Green Roofs described above are General Common Elements, the Owners shall not have regular access to such areas of the Building and such General Common Elements shall be operated and maintained by the Association.

2.9 Common Allocations. Each Unit is allocated a Common Allocation percentage as listed on Exhibit B. The Common Allocation percentage for each of the Affordable Housing Units has been based on the relative estimated fair market value of the Affordable Housing Units as compared and in proportion to the estimated fair market value of the other Units in the Building. The Common Allocation percentages as shown on Exhibit B are fixed and are not subject to future adjustment based on subsequent changes to the estimated fair market values of such Units. The Common Allocation percentage for the Units other than Affordable Housing Units has been determined by subtracting the Common Allocation percentage allocated to the Affordable Housing Units from 100% and then allocating the remaining percentage to the other Units *pro rata* in proportion to their respective floor areas, as calculated on a uniform and consistent basis, except that the floor area of Unit 001 (Storage) and Unit 102 (Storage) for the purposes of such calculation has been reduced by 50% to reflect the limited uses associated with a Storage Unit. To the extent that the Central Mechanical System includes BTU flow meters to calculate thermal energy utilized by the Units in the Building, the allocation of energy costs may be based upon the actual energy flow calculated by the BTU flow meters.

2.10 Allocated Interests. The allocated interests (the “**Allocated Interests**”) appurtenant to each Unit shall be determined in accordance with the formulas set forth below. The initial Allocated Interests for the Units pursuant to Sections 2.10(a), 2.10(b) and 2.10(d) below are set forth on Exhibit B.

(a) Ownership of Common Elements. Each Unit is allocated a percentage of the undivided interest in the Common Elements equal to its Common Allocation.

(b) Liability for Common Regular Expenses. Each Unit is allocated, and the Owner of the Unit is liable for, a percentage of all Common Regular Expenses equal to the Unit's Common Allocation. All other costs and expenses of the Association are allocated among the Units as otherwise provided in this Declaration (such as the allocation of Limited Regular Expenses set forth in Section 2.10(c), Limited Special Expenses set forth in Section 7.2(b), the allocation of Reimbursable Expenses set forth in Section 7.2(c), and the allocation of Voluntary Capital Expenses set forth in Section 7.2(e)). Notwithstanding the foregoing, no Owner of an Affordable Housing Unit shall be required to pay any portion of a Common Regular Expense that (a) is not reasonably required to be incurred by the Association for the purpose of fulfilling the Association's obligations under this Declaration or applicable law; or (b) is being incurred for any service, improvement or other item that either does not benefit the Owners of the Affordable Housing Units or will not be available for use by the Owners of the Affordable Housing Units; or (c) that exceeds such Unit's Common Allocation of such Common Regular Expense as described in Section 2.9 and listed on Exhibit B of this Declaration.

(c) Liability for Limited Regular Expenses. In addition to the liability for Common Regular Expenses, each Unit is allocated and the Owner of the Unit is liable for, a fraction of the Limited Regular Expenses incurred by the Association for the benefit of the Unit (e.g., to provide regular maintenance, cleaning and insurance for a Limited Common Element allocated to the Unit), such fraction having as its numerator the Common Allocation of the Unit and as its denominator the sum of the Common Allocations of all the Units benefited by such particular Limited Regular Expenses. Notwithstanding the foregoing, no Owner of an Affordable Housing Unit shall be required to pay any portion of a Limited Regular Expense that either (a) is not reasonably required to be incurred by the Association for the purpose of fulfilling the Association's obligations under this Declaration or applicable law; or (b) is being incurred for any service, improvement or other item that either does not benefit the Owners of the Affordable Housing Units or will not be available for use by the Owners of the Affordable Housing Units.

(d) Votes in the Association. In all matters coming before the Association for which a vote of all of the Owners is required, each Unit's votes are allocated pro rata in proportion to each Unit's floor area, as set forth in Exhibit B, which will be deemed final and binding on the Members.

2.11 Reservation of Development and Other Rights. Declarant reserves the following Development Rights on all or any portion of the Property, from time to time and in whatever order the Declarant, in its sole discretion, determines:

(a) The right to add any "**Additional Unspecified Property**" (as that term is defined by the Act) to the Property and to subject such real property and additional unspecified property to the provisions of this Declaration;

(b) The right to add (create) additional Units and Common Elements (including, specifically, the right to allocate areas added to the Condominium Project as

Common Elements) and to subdivide Units, relocate boundaries between Units, convert Units into Common Elements, convert Common Elements into Units, and create Limited Elements. The foregoing Development Rights shall apply to all of the Units, but may be exercised by Declarant with respect to a Unit not owned by Declarant only with the Owner's written consent;

(c) The right to withdraw all or any portion of the Property from the Condominium Project; and

(d) The right to exercise any development right reserved or allowed in the Act.

2.12 Reservation of Special Declarant Rights. Declarant reserves the following Special Declarant Rights, which may be exercised at any time and from time to time on all or any portion of the Property in any order (with no assurance as to such order), with respect to different parcels of real estate at different times, and the exercise of any such rights with respect to one portion of the Property shall not require the exercise of such right as to any other portions of the Property at that time.

(a) Development Rights. During the Declarant Development Period, Declarant may, but is not required to, exercise any or all of the Development Rights in accordance with Section 38-33.3-210 of the Act and all additional rights reserved pursuant to Section 2.11.

(b) Improvements. During the Declarant Development Period, Declarant may, but is not required to, construct and/or complete any improvements on the Property to the full extent permitted by the Act at the sole cost and expense of Declarant, including, without limitation, the following: (i) constructing any improvements indicated on the Map (including but not limited to the Building and all Common Elements and Units); (ii) remodeling or refurbishing any one or more of the Common Elements; (iii) remodeling or refurbishing any Unit owned by Declarant; (iv) installing security equipment, such as cameras, monitors and video recorders, on or about the hallways; (v) installing utility lines running through existing or newly created chases in the Common Elements or in any or all of the Units, as may be necessary or desirable to provide additional utility services in some or all of the Units; (vi) constructing or installing lighting in or on any of the Common Elements; and (vii) constructing or installing signage relating to the Condominium Project.

(c) Allocation and Reallocation of Commercial Parking Spaces. During the Declarant Development Period, Declarant may allocate Commercial Parking Space(s) to particular Commercial Units pursuant to Section 2.7(g) of this Declaration. During the Declarant Development Period, Declarant also may from time to time reallocate between or among any Commercial Units owned by Declarant any Commercial Parking Space(s) allocated to such Commercial Units pursuant to Section 2.7(g) of this Declaration. To effect a reallocation during the Declarant Development Period, Declarant will execute, acknowledge and Record a written instrument to show the changes in the allocations of the Commercial Parking Spaces. Declarant may not reallocate under this Section 2.12(c)

any Commercial Parking Space that is then allocated to a Commercial Unit not owned by Declarant; however, nothing in this Section 2.12(c) prevents Declarant, as an Owner, and another Owner from effecting a reallocation of Commercial Parking Spaces pursuant to Section 8.2.

(d) Allocation and Reallocation of Penthouse Parking Spaces. During the Declarant Development Period, Declarant may allocate Penthouse Parking Space(s) to particular Penthouse Units pursuant to Section 2.7(f) of this Declaration. During the Declarant Development Period, Declarant also may from time to time reallocate between or among any Penthouse Units owned by Declarant any Penthouse Parking Space(s) allocated to such Penthouse Units pursuant to Section 2.7(f) of this Declaration. To effect a reallocation during the Declarant Development Period, Declarant will execute, acknowledge and Record a written instrument to show the changes in the allocations of the Penthouse Parking Spaces. Declarant may not reallocate under this Section 2.12(d) any Penthouse Parking Space that is then allocated to a Penthouse Unit not owned by Declarant; however, nothing in this Section 2.12(d) prevents Declarant, as an Owner, and another Owner from effecting a reallocation of Penthouse Parking Spaces pursuant to Section 8.3.

(e) Commercial Subdivision. During the Declarant Development Period, Declarant may combine two or more Commercial Units or subdivide any Commercial Unit(s) into two or more Commercial Units provided that the total amount of net leasable commercial/office square footage does not exceed 10,376 square feet. To effect such a combination or subdivision of one or more Commercial Units during the Declarant Development Period, Declarant shall execute, acknowledge and Record an amendment to this Declaration (including the Map) showing the affected Unit(s), its/their new boundaries and dimensions and any changes to its/their identifying number(s), including any changes in the allocation of Commercial Parking Spaces, if applicable, and in the allocation of votes and Common Allocations resulting from the combination or subdivision.

(f) Marketing. During the Declarant Development Period, Declarant may maintain sales offices, management offices and model Unit(s) in any Unit(s) owned by Declarant. Declarant may change the locations of the offices and model Unit(s) from time to time during the Declarant Development Period. During the Declarant Development Period, Declarant may maintain signs on any Limited Common Elements allocated to any Unit owned by Declarant, advertising the Units for sale and directing prospective purchasers to the offices or model Unit(s). Upon the termination of the Declarant Development Period, Declarant has a period of 30 days to remove any property of Declarant located on any portion of the Common Elements used for office or model purposes.

(g) Appoint Board and Officers. To the maximum extent permitted by the Act, during the Declarant Control Period, Declarant may appoint and remove the members of the Board and the officers of the Association.

(h) Amend Declaration. In addition to the amendments to this Declaration that Declarant may expressly make pursuant to the provisions of this Declaration, Declarant may during the Declarant Development Period amend this Declaration and the Map in any manner authorized by the Act.

2.13 Assignment of Special Declaration Rights. Declarant may assign any or all of the Special Declarant Rights in accordance with Section 38-33.3-304 of the Act.

2.14 Number of Units. Initially, the Condominium Project will consist of eight (8) Residential Units (Four Penthouse Units and Four Affordable Housing Units) four (4) Commercial Units and two (2) Storage Units.

ARTICLE 3 **EASEMENTS**

3.1 Limited Common Elements. To the extent that any Unit is allocated the exclusive use of a particular Limited Common Element pursuant to this Declaration (such as, for example, a Deck or Parking Space), the Owner of that Unit has an Easement for access to and from that Limited Common Element and the exclusive use and enjoyment of that Limited Common Element. In those cases where a Limited Common Element is allocated to more than one Unit pursuant to this Declaration (such as, for example, Elevator 1 for the benefit of the Owners of the Penthouse Units), the Owners of the Units to which that Limited Common Element is allocated have a nonexclusive Easement for the use and enjoyment of that Limited Common Element. Subject to the last sentence of Section 2.7(j), in connection with the lease of any Unit or portion of a Unit to which a Limited Common Element is allocated under this Declaration, the Owner of the Unit shall be deemed to have extended to its Permittee under such lease the right of use and enjoyment of such Limited Common Element established under this Section 3.1. Notwithstanding any provision of this Declaration to the contrary, whenever an Owner has an Easement to use any Limited Common Element pursuant to this Declaration, and regardless of whether the Easement is deemed exclusive or nonexclusive or whether it concerns a Deck, or another Limited Common Element, the right of the Owner and its Permittees to use that Limited Common Element is subject to the Easements described in Sections 3.2 through 3.6.

3.2 Easements Benefiting Association. The Association has nonexclusive easements over and across the Common Elements, and over and across other portions of the Condominium Project to gain access to the Common Elements, as necessary or convenient for the Association, acting through its Permittees, to exercise its rights and perform its obligations under this Declaration, including, without limitation, its rights and obligations to enforce the Condominium Instruments and to maintain, repair, operate, manage and control the Common Elements. Without limiting the generality of the previous sentence, the Association has an Easement to enter each Unit to the extent reasonably required to operate, manage and control the Central Mechanical Equipment, and any other Common Elements within the boundaries of the Unit or as reasonably necessary to perform other maintenance and repair duties imposed on the Association by this Declaration. Penthouse Units A and B specifically grant the Association an easement over, across and through its Unit in order to access the Common Elements located on the Roof. Except in the case of emergency situations concerning threatened injury or damage to persons or

property, the Association shall not enter into any Unit pursuant to the Easement established under this Section 3.2 without giving reasonable advance notice to the occupant thereof.

3.3 Easements Benefiting Declarant. Declarant reserves Easements over and across the Condominium Project as may be reasonably necessary for the purposes of completing the construction of any improvements or alterations; constructing and installing any shafts, chutes, flues, ducts, vents, chases, pipes, wires, conduits or utility lines necessary to serve those improvements or alterations; storing construction materials relating to those improvements and alterations and their service elements; showing Units and Common Elements to prospective purchasers, tenants and lenders; displaying signs; performing any of Declarant's obligations under this Declaration; and exercising any rights reserved to Declarant pursuant to this Declaration and/or the Act, including, without limitation, any Special Declarant Rights. Declarant's Easements will exist as long as reasonably necessary for those purposes. Without limiting the generality of the previous two sentences, if Declarant elects to install utility lines to provide additional utility services in some or all of the Units, Declarant will have Easements to install the utility lines and chases housing them on, over, under, across and through the interior or exterior Common Elements.

3.4 Easements to Repair, Maintain, Restore and Reconstruct. With respect to any provisions of this Declaration or the Act that authorize or require any Person (including, without limitation, the Association) to repair, maintain, restore or reconstruct all or any part of any Unit or Common Element, Easements exist as necessary or convenient to gain access and perform the authorized or required work to the portions of the Condominium Project requiring repair, maintenance, restoration or reconstruction, with Persons, materials and equipment to the extent and for the periods reasonably necessary to enable the Person to perform the authorized or required work. Without limiting the generality of the previous sentence, the Association has an Easement to enter each Unit to the extent reasonably required to repair and maintain the Central Mechanical Equipment and Utility/Service Elements that are Common Elements. The Easements created under this Section 3.4 burden those portions of the Condominium Project through which they run and benefit the Persons authorized or required to perform, and those portions of the Condominium Project requiring, the repair, maintenance, restoration or reconstruction.

3.5 Easement for Emergency Personnel. Any authorized emergency personnel including, without limitation, emergency medical services personnel, fire response personnel and law enforcement personnel, shall have a non-exclusive Easement over and across portions of the Condominium Project as necessary to carry out their duties and obligations during an emergency situation within the Condominium Project.

3.6 Additional Easements.

(a) Declarant's Right to Grant Easements. Declarant reserves the non-exclusive right and power to grant, during the Declarant Development Period, such additional specific Easements over any portion of the Property owned by Declarant and the Common Elements as may be necessary, in the sole discretion of Declarant, to the orderly development of any portion of the Property.

(b) Association's Right to Grant Easements. Notwithstanding anything to the contrary in this Declaration, the Association, acting through the Board and without the approval of the Owners, may grant Easements over the Common Elements for installation and maintenance of utilities and for other purposes that benefit the Owners.

3.7 Easements Run with Land. All Easements established and existing pursuant to this Article 3 are appurtenant to and run with the Property and unless otherwise stated in the Declaration will be perpetually in full force and effect so long as the Condominium Project exists and inure to the benefit of and are binding upon Declarant, the Association, Owners, Permittees, Security Holders and any other Persons having any interest in the Condominium Project or any part of it. The Units will be conveyed and encumbered subject to all Easements set forth in this Article 3, whether or not specifically mentioned in the conveyance or encumbrance.

3.8 Regulation by Association. All Easements existing pursuant to this Article 3 are subject to reasonable Rules that the Association may promulgate concerning the use and enjoyment of those Easements. Such Rules will be promulgated in accordance with Section 4.10 and the Act and may regulate matters such as the permitted number, time and manner of uses of the Easements.

3.9 Other Title Matters Affecting the Property. The title matters and Easements identified on Exhibit C, which were created prior to the date of this Declaration, and any Easements created by or depicted on the Map, affect the Property.

ARTICLE 4

COVENANTS, CONDITIONS AND RESTRICTIONS

4.1 Administration. The Condominium Project will be administered in accordance with the provisions of the Act and the Condominium Instruments. All Common Elements are subject to the reasonable supervision, operation, management and control of the Association. Unless reserved to the Owners pursuant to the Act or this Declaration, the Board acts in all instances on behalf of the Association.

4.2 Compliance. Each Owner, Permittee and Security Holder and all parties claiming under them will take and hold their right, title and interest in any Unit subject to all of the covenants and conditions of the Act and the Condominium Instruments. Each Owner, Permittee and Security Holder will comply with all applicable provisions of the Condominium Instruments, as those documents may be amended from time to time and with all applicable provisions of the Act.

4.3 Residential Units.

(a) Permitted Uses. Each Residential Unit may be occupied and used only for: (i) residential uses and uses incidental to them; (ii) rentals of the entire Residential Unit for residential purposes (subject to Section 4.3(c) below); and (iii) home occupations permitted by applicable zoning laws, so long as such use is incidental to residential use of the Residential Unit, does not involve use of the Residential Unit by any employee or independent contractor (other than the Residential Owner), does not involve regular commercial deliveries to or from the Residential Unit other than small packages shipped

by an express courier service, does not involve regular visits to the Residential Unit by any customers or prospective customers, does not materially increase the use of the Lobby or any stairs or elevator in the Building, and is not advertised or identified by signage on any directory in or on the Building (including on the inside of any windows). During the Declarant Development Period, Declarant may also use one or more Residential Units owned by Declarant for sales or management offices or for model Residential Units.

(b) Prohibited Uses. Except as otherwise provided in Section 4.3(a), no Residential Unit may be used for any commercial purposes.

(c) No Time Shares or Vacation Clubs. No Residential Unit may be used for the creation, by any means, of any "time share estate" as defined in C.R.S. § 38-33-110 or any other time share, interval ownership, vacation club or similar estate or interest in the Residential Unit, no matter how described or classified, by which a purchaser, investor, tenant or licensee obtains the right to exclusive use of the Residential Unit for a limited period of time.

(d) Pets. No animals, rodents, reptiles, birds or other pets may be kept in any Residential Unit except usual and ordinary domestic household pets e.g., dogs, cats, small birds kept in cages and similar small pets). The Board may adopt Rules from time to time regulating pets within the Residential Units. Without limitation, the Rules may govern the kind and number of pets that may be kept in a Residential Unit and may provide for the removal of pets that unreasonably disturb other occupants of the Residential Units or cause damage to a Common Element. No pet may be kept, bred or maintained for any commercial purpose in any Residential Unit.

4.4 Commercial Units.

(a) Generally. Subject to any lease terms imposed by the Owner thereof and the express terms of this Declaration (including Section 4.4(b) below), any Commercial Unit may be used for any lawful purposes.

(b) Nightclubs, Bars, Restaurants, Etc. No Commercial Unit or portion of a Commercial Unit shall be used for any of the following uses: (i) any establishment primarily devoted to the serving of alcoholic beverages for on-premises consumption provided, however, that a user of a Commercial Unit may from time to time conduct special events, such as an art gallery owner may serve wine; (ii) any restaurant, bakery, or any other vendor of food cooked on site using any cooking appliance, stove, oven or the like that would require separate venting of exhaust to the exterior of the Building, but would not prohibit use of warming trays, microwaves, convection toasters or other appliances to reheat food that do not require separate venting of exhaust to the exterior of the Building; (ii) any establishment operated as a place of entertainment characterized by dancing or live or recorded music; or (iii) any establishment open for business to the public and admission of customers after 10 p.m.; or (iv) any establishment or commercial enterprise for adult entertainment purposes. This Section 4.4(b) shall not be amended without the unanimous written approval of the Residential Owners.

(c) Marijuana. No Commercial Unit or Storage Unit or portion of a Commercial Unit or Storage Unit shall be used for growing, processing, possessing, cultivating, marketing, offering or selling marijuana (such prohibition to include, without limitation, a medical marijuana apothecary or dispensary), any derivative product thereof, or any paraphernalia associated with drug use.

4.5 Seasonal Decorations. No seasonal decoration of any type or variety (for example, without limitation, any decoration relating to Halloween, Christmas, Hanukkah or the New Year), whether or not illuminated, shall be displayed from or on any Deck or on any window of a Residential Unit except to the extent expressly permitted by the Rules.

4.6 Deck Landscaping. No landscaping or plant materials shall be placed or installed on any Deck, other than in portable containers that are not affixed to any portion of the Deck or the Building or in planters designed and integrated into the original design and construction of the Building by Declarant, except with the prior written approval of the Board. To seek approval from the Board of any new additional landscaping planters or similar improvements that will be affixed to any portion of a Deck, the Owner shall submit the following materials to the Association: (i) a plan and rendering depicting the proposed landscaping or plant materials; (ii) engineering construction plans for the landscaping or plant materials certified by a professional engineer registered in the State of Colorado, including a certification by such engineer that the loads created by such landscaping or plant materials will not adversely affect or impair the structural stability of any structural element of the Building; and (iii) such documentation as is sufficient to demonstrate to the reasonable satisfaction of the Board that no water leakage from the landscaping or plant materials will penetrate the weather enclosure system of the Building or otherwise threaten any interior space of the Building. If the applicant for the proposed landscaping or plant materials satisfies the above-described application requirements, the Board may, but shall not be required to, approve the installation of such landscaping or plant materials if it determines, based on the submitted plans, that no threat to the enclosure systems of the Building or harm to any Building interior would result therefrom. Any hose bibs on any Deck used for the purpose of watering any landscaping or plant materials located on such Deck shall be equipped with automatic timers that shall be used to ensure that other areas of the Building are not threatened by overflowing water from such watering.

4.7 Hot Tubs. No hot tub, spa, Jacuzzi or similar device shall be installed on any Deck except the Decks allocated to Penthouse Unit A, B, C and D. Any hot tub, spa, Jacuzzi or similar device installed on a Deck of Penthouse Unit A, B, C or D shall not have a gross weight when filled that exceeds the load bearing capacity of the Deck. In addition, any such hot tub, spa, Jacuzzi or similar device installed on a Deck of Penthouse Unit A, B, C or D shall be installed in accordance with the manufacturer's installation specifications and in accordance with all applicable laws.

4.8 Parking Spaces. No commercial vans, boats, off-road motorcycles, snowmobiles, ATVs, campers, trailers or other commercial or recreational vehicles of any type may be kept or parked in any Parking Space. No Parking Space may be used for repairing or undertaking any mechanical work on any vehicle. Any Parking Space may be leased to another Unit Owner or tenant of any Unit within the Building. No Parking Space may be leased to any person or entity

that is not an occupant (by lease or tenancy) or a Unit Owner of a Commercial Unit or Residential Unit.

4.9 Prohibited Uses Generally. Uses other than those expressly permitted under this Declaration are prohibited unless the Board is expressly empowered to, and does approve a particular prohibited use. Where the Board is expressly empowered pursuant to this Declaration to approve a particular use or action, the Board may impose reasonable conditions upon the use or action as it deems necessary to protect the integrity of the Condominium Project and the rights of other Owners. In addition to other uses prohibited by this Section 4.9, the following uses are prohibited:

(a) No Nuisance. No Unit or Common Element may be used for any use (i) constituting a public or private nuisance; (ii) consisting of the manufacture of any product; or (iii) which causes undue odor, noise or vibration in any other Unit or Common Element.

(b) No Loud Music. No audio or audio/visual system within a Unit may be operated in a manner that is audible from within any other Unit. Without limiting the preceding sentence, no speakers shall be installed in any wall that divides one Unit from another Unit or a Common Element. No live music shall be permitted in any Commercial Unit or Residential Unit except on special occasions.

(c) No Overloading. No Unit or Common Element may be used for any use beyond the maximum loads the floor slabs of the Condominium Project are designed to carry. Further, no Unit or Common Element may be used for any use which would place any extraordinary burden on any Common Element, unless the Board gives its prior written consent.

(d) No Violation of Law. No portion of the Condominium Project may be used for any use which violates any law, statute, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the Condominium Project, including, without limitation, any of them that regulate or concern hazardous or toxic waste, substances or materials.

(e) Restriction on Antennas. Except as installed by the Declarant, and except as may be expressly allowed by (and in accordance with) the Federal Telecommunications Act of 1996, as amended, no exterior radio antenna, television antenna, or other antennas of any type shall be erected or maintained by any Owner on any Deck or the exterior of any portion of the Building without the prior approval of the Board, which may reasonably withheld or conditioned to protect the structural or aesthetic qualities of the Building.

4.10 Rules. In addition to the restrictions, conditions and covenants in this Article 4 concerning the use of the Condominium Project, the Units and the Common Elements, the Board may from time to time after notice to Owners in accordance with the Act promulgate and amend reasonable Rules not in conflict with the Act or the other Condominium Instruments.

4.11 Indemnity. Subject to Section 9.4, each Owner will be liable to and will protect, defend, indemnify and hold harmless the Association and the other Owners from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever (collectively referred to as "**Claims**") suffered or incurred by, or threatened or asserted against, the Association or any other Owner as a result of or in connection with the willful misconduct, negligence or breach of the Act or a provision of the Condominium Instruments by action or failure to act, by the indemnifying Owner or its Permittees. The indemnifying Owner will pay for all Claims suffered or incurred by the Association for which the indemnifying Owner is responsible promptly upon receipt of a demand for payment from the Association. To the extent provided in Section 7.2(c), the amount of any Claims suffered by the Association will constitute Special Assessments against the indemnifying Owner's Unit. If the indemnifying Owner fails to make such payment within 30 days after receipt of the Association's demand for it, the Association may take whatever lawful action it deems necessary to collect the payment including, without limitation, foreclosing its lien or instituting an action at law or in equity. Nothing in this Declaration relieves any Permittee from liability for its own acts or omissions. Nothing contained in this Section 4.11 will be construed to provide for any indemnification which violates applicable laws, voids any or all of the provisions of this Section 4.11 or negates, abridges, eliminates or otherwise reduces any other indemnification or right which the Association or the Owners have by law.

4.12 Enforcement.

(a) This Declaration and the other Condominium Instruments constitute a general scheme benefiting each Unit and the Property as a whole and may be enforced by the Association or an aggrieved Owner. A violation of any of the provisions of this Declaration causes irreparable damage to the Property. Therefore, subject to the terms and conditions of this Section 4.12 and except as otherwise expressly provided elsewhere in this Declaration, Declarant, the Association and any aggrieved Owner may prosecute a proceeding at law or in equity against any Person violating or attempting to violate the provisions of this Declaration, including, without limitation, an action for a temporary restraining order, preliminary injunction and permanent injunction.

(b) Any Person attempting to enforce the provisions of this Declaration, including, without limitation, any Assessment obligation, regardless of whether a suit is initiated, may recover reasonable attorneys' fees and other legal costs incurred in successfully enforcing the provision to the extent provided in Section 123 of the Act. Any Owner who is successful in defending any such claim raised against him or her shall also be entitled to reasonable attorneys' fees and other legal costs he or she incurs in successfully defending the claim to the extent provided in Section 123 of the Act. If the Person is an Owner or the Permittee of an Owner, the amount of any fees and costs payable to the Association constitute a lien against the Owner's Unit which may be foreclosed in accordance with Section 7.4(b). In addition, if any Owner fails to comply with any provision of the Condominium Instruments, the Association may (i) impose monetary penalties, and (ii) impose other appropriate measures; provided, however, that before imposing any of those measures (other than late charges, interest and reasonable

collection costs relating to delinquent payments), the defaulting Owner will be provided prior notice of the claimed default and a reasonable opportunity to be heard by the Board.

(c) In accordance with Section 124 of the Act, before an aggrieved Owner may prosecute any proceeding at law or in equity enforcing the provisions of this Declaration or seeking other relief relating to a violation or attempted violation of the provisions of this Declaration, the Owner will first give written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the person alleged to have violated or attempted to violate the provisions of this Declaration. The Board may initiate a proceeding at law or in equity to enforce the provisions of this Declaration, to prevent a violation or to obtain damages for damage to the Common Elements resulting from the violation, or may otherwise enforce the provisions of this Declaration. The aggrieved Owner may exercise any of its rights under Section 4.12(b) if (i) the violation or attempted violation results or would result in direct and immediate physical damage to the Owner's Unit, or (ii) the Association fails to enforce or cause enforcement of the violated provisions of this Declaration within 60 days after the Board receives the Owner's notice.

(d) The provisions of this Section 4.12 are subject to Article 16.

ARTICLE 5

OPERATION, MAINTENANCE AND REPAIR

5.1 Association's Duties. Subject to the provisions of Article 10 and Section 5.2, the Association has the following rights and responsibilities with respect to the operation, maintenance and repair of the Condominium Project:

(a) Maintenance of Common Elements. Except to the extent that the Owners are responsible for or undertake the cleaning of Limited Common Elements and except as provided in Section 5.2, the Association shall clean, insure, maintain, repair, replace and restore the Common Elements. The Association shall maintain the Common Elements (including all exterior elements of the Building) in a manner that is consistent with a first-class, mixed-use residential and commercial building in downtown Aspen, Colorado and as otherwise required by this Declaration and applicable law (the "**Maintenance Standard**").

(b) Central Mechanical Equipment.

(i) The Association will operate the Central Mechanical Equipment to provide utilities and other services to the Units and the other Common Elements. The Association's costs to operate the Central Mechanical Equipment, including, the costs of utilities not otherwise paid directly by the Owners, will be included in Common Expenses, subject to the provisions of Sections 5.1(b)(ii).

(ii) The Association may utilize any reasonable means (including, without limitation, the installation of meters or similar measuring devices on some or all of the Central Mechanical Equipment or utility lines) to equitably determine

the Central Mechanical Equipment services or utilities (not otherwise paid directly by the Owners) separately supplied to each Unit and Common Element. From and after the date of implementation of such means, the costs of operating or providing the Central Mechanical Equipment or utilities will be divided among the Units and Common Elements based upon usage as so determined. The portion of the costs attributable to each Unit will be assessed against the Unit as a Reimbursable Expense pursuant to Section 7.2(c) and the portion attributable to the Common Elements will be included in Common Expenses. Without limiting the foregoing, the Association shall have the authority to assess each Residential Owner for the natural gas service supplied to such Owner's Residential Unit based on the number of gas-fired appliances and devices located in such Unit and on its Deck.

(c) Cost of Maintaining General Common Elements. The costs incurred by the Association in cleaning, insuring, maintaining, repairing, replacing and restoring the General Common Elements pursuant to this Declaration will be Common Regular Expenses and will be paid for through Regular Assessments levied against all of the Owners pursuant to Sections 2.10(b) and 7.1.

(d) Costs of Maintaining Limited Common Elements. The costs incurred by the Association in cleaning, insuring, maintaining, repairing, replacing and restoring any Limited Common Elements pursuant to this Declaration will be Limited Regular Expenses and will be paid for through Regular Assessments pursuant to Sections 2.10(c) and 7.1.

(e) Election to Perform Owners' Duties. The Association may, in its discretion, elect to maintain, repair, replace or restore any Unit or Limited Common Element, or portion of either of them, that an Owner is required to maintain, repair, replace or restore. The Owner will pay all costs incurred by the Association in accordance with this Section 5.1(e) upon receiving the Association's demand for payment. Such costs and expenses shall constitute a Reimbursable Expense, levied as a Special Assessment and collectible as provided in Section 7.3 below.

5.2 Special Rights of Commercial Owners. The Commercial Owners, acting together or individually, shall have the right to maintain, clean, repair, replace and restore any Limited Common Elements allocated exclusively to such Commercial Owner(s)'s Unit(s). Any such work shall be performed in compliance with all applicable laws in a good and workmanlike manner, free and clear of any mechanics' or materialmen's liens. Any such work performed by any Commercial Owner(s) shall be undertaken at the sole cost and expense of the Commercial Owner(s) undertaking the work.

5.3 Owners' Duties. Subject to the provisions of Article 10, each Owner will at its expense (i) maintain at all times in good and clean condition, and perform all required repairs, replacements or restorations of, its Unit, including, without limitation, all mechanical, electrical and plumbing systems, lines, equipment or components that are located in, and exclusively serve, the Unit; (ii) with respect to each Unit with a Deck, keep and maintain such Deck in a good, clean and sanitary condition and in good repair; (iii) perform its responsibilities in a manner that

does not unreasonably disturb other Owners or their Permittees; and (iv) promptly report to the Association any defect or need for repairs for which the Association is responsible. In addition, each Owner will pay for all utility and similar services that are provided to the Owner's Unit and for which the Unit is separately metered or for which the Owner receives a separate bill from the provider of such service or from the Association.

5.4 Management Contracts and Contracts with Declarant. Any agreement for the professional management of the Condominium Project and any other contract providing for services of Declarant shall be consistent with the requirements of the Act governing such agreements.

ARTICLE 6

THE ASSOCIATION AND BOARD

6.1 Formation of the Association; Membership. The Association will be formed no later than the date the first Unit is conveyed to an Owner other than Declarant. Each Owner is a member of the Association as soon and for so long as it is an Owner. Following a termination of the Condominium Project, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Property. Membership in the Association automatically terminates when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise, and the new Owner automatically succeeds to that membership in the Association. The Association will recognize a new member upon presentation by a new Owner of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Unit. Membership in the Association may not be transferred, pledged or alienated in any way, except to the new Owner upon conveyance of a Unit. Any prohibited transfer is void and will not be recognized by the Association.

6.2 Powers. The Association acting through the Board serves as the governing body for the Condominium Project and has the powers and responsibilities set forth in the Condominium Instruments and the Act, specially including the authority and power to:

- (a) adopt and amend the Bylaws and Rules;
- (b) adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments or any other amounts due from Owners or others to the Association;
- (c) hire and terminate managing agents and other employees, agents and independent contractors;
- (d) subject to the terms of this Declaration, institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself (but not individual owners) on matters affecting the Condominium Project;
- (e) make contracts and incur liabilities;

(f) borrow funds to cover Association expenditures and pledge Association assets as security therefor, provided that Common Elements may be subjected to a security interest only pursuant to Section 14.2;

(g) regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(h) cause additional improvements to be made as a part of the Common Elements;

(i) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Condominiums), provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 14.2;

(j) grant Easements, leases, licenses, and concessions through or over the Common Elements;

(k) impose and receive any payments, fees or charges for any services provided to Owners;

(l) impose charges for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Condominium Instruments;

(m) impose reasonable charges for the preparation and Recording of amendments to this Declaration or statements of unpaid Assessments pursuant to Section 14.4;

(n) provide for the indemnification of its officers and members of the Board and maintain directors' and officers' liability insurance;

(o) assign its right to future income, including the right to receive Assessments, provided that the Association must continue to have sufficient revenues to meet its obligations under this Declaration;

(p) exercise any other powers conferred by this Declaration, the Articles, the Bylaws or the Act;

(q) exercise all other powers that may be exercised in the State of Colorado by legal entities of the same type as the Association; and

(r) exercise any other powers necessary and proper for the governance and operation of the Association.

This Declaration may not impose any limitations on the powers of the Association to deal with Declarant which are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

6.3 The Board of Directors. The affairs of the Association shall be governed by the Board of Directors, which may, by resolution, delegate any portion of its authority to an executive committee or an officer, executive or Director of the Association. Except as otherwise provided by Section 6.4 during the Declarant Control Period, the Board will consist of five directors (each, a “**Director**”). Each Director shall be a natural person who is 18 years of age or older and shall be an Owner or a designee of an Owner in accordance with the Bylaws. Each Owner shall be permitted to have more than one designee for the purposes of this Section 6.3.

6.4 Appointment of Directors by Declarant. Upon commencement of the Declarant Control Period, there shall be three Directors, all of whom shall be appointed by Declarant. From the date that is 60 days after the date on which 25% of the maximum number of Units that may be created pursuant to Section 2.14 have been conveyed to Owners other than Declarant, until the end of the Declarant Control Period, the Board will consist of three Directors, two of whom will be appointed by Declarant and one of whom will be elected by Owners other than Declarant. No Director appointed by Declarant shall be required to be an Owner or the authorized representative of an Owner. No Directors appointed by Declarant may be removed by a vote of the Members.

6.5 Election of Directors after Declarant Control Period. Except as otherwise provided in Section 38-33.3-220(5) of the Act, from and after the end of the Declarant Control Period, the Owners will elect all of the Directors in accordance with this Section 6.5. The Commercial Owners will nominate and elect one Director (the “**Commercial Director**”), all of the Owners will nominate and elect one at-large Director (the “**At-Large Director**”), and the Residential Owners will nominate and elect three Directors as follows: two directors to be elected by the Penthouse Unit Owners (“**Penthouse Directors**”) and one director to be elected by the Affordable Housing Unit Owners (“**Affordable Housing Director**”) (collectively the Penthouse Director and the Affordable Housing Director may be referred to as the “**Residential Directors**”) to complete the Board. The At-Large Director shall be elected by a majority vote of all Allocated Interests (all Units) as set forth on Exhibit B. The Commercial Director shall be elected by a majority vote of the Commercial Unit Allocated Interests as set forth on Exhibit B. The Penthouse Directors shall be elected by a majority vote of the Penthouse Units Allocated Interests as set forth in Exhibit B. The Affordable Housing Director shall be elected by a majority vote of the Affordable Housing Allocated Interests set forth in Exhibit B. The majority of the Directors elected by the Owners after the end of the Declarant Control Period must be Owners other than Declarant or designees of Owners other than Declarant. This Section 6.5 shall not be amended except with the approval of Owners holding at least 67% of the votes in the Association. Directors elected under this Section 6.5 shall take office upon termination of the Declarant Control Period.

6.6 Board Action. All actions and decisions of the Board shall require the affirmative vote of at least 67% of the votes of the Directors, which must include in each case the affirmative vote of the Commercial Director for any matter that may have any material adverse effect on the Commercial Units or the Commercial Owners and/or the affirmative vote of the Residential

Directors for any matter that may have any material adverse effect on the Residential Units or the Residential Owners. This Section 6.6 shall not be amended except with the approval of Owners holding at least 67% of the votes in the Association.

6.7 Limitations on Powers of the Board. Except as expressly permitted pursuant to this Declaration or the Act, the Board may not act on behalf of the Association to amend this Declaration, to terminate the Condominium Project, or to elect members of the Board or determine the qualifications, powers and duties or terms of office of the Board members, but the Board may fill vacancies in its membership for the unexpired portion of any term to the extent not inconsistent with this Declaration, the Bylaws, the Act and other applicable laws.

6.8 Bylaws. The Association may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or the Act. The Bylaws may include, without limitation, provisions consistent with this Declaration regarding the voting rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association.

6.9 Budget.

(a) Preparation of Budget. The Board will cause a proposed annual budget for the Association to be prepared and thereafter adopted by the Board. The annual budget shall include, in addition to other required or appropriate expenditures, amounts to be assessed and maintained by the Association in one or more reserve funds for the periodic maintenance, replacement and repair of Common Elements such as, without limitation, the Building's roof, mechanical systems, elevators and exteriors (collectively, the "**Reserve Fund**"). The amounts to be annually contributed to the Reserve Fund shall be based on a reserve study, which may be based on a physical analysis and/or financial analysis and may be internally conducted by the Association. The Association shall update any such reserve study on a reasonable periodic basis for the purpose of reasonably determining whether the amounts annually contributed to the Reserve Fund will be adequate to fund future periodic maintenance, replacement and repair of Common Elements that is expected to be required.

(b) Ratification of Budget. The budget shall be submitted to the Owners in accordance with the Act and applicable provisions of the Bylaws. For the first Fiscal Year of the Association, the Board may adopt Declarant's estimated budget for the Association and make Assessments according to such budget.

6.10 Enforcement of Declaration, Bylaws and Rules.

(a) Sanctions and Self-Help. After reasonable notice and an opportunity to be heard, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of the Condominium Instruments; (ii) exercise self-help to cure any violations of the Condominium Instruments that an Owner or Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 30 days delinquent

in paying any Assessment or other charge due to the Association. All of the remedies set forth in the Condominium Instruments shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of the Condominium Instruments, it shall be entitled to recover all costs (including, without limitation, attorneys' fees and court costs to the extent specifically provided under Section 38-33.3-123 of the Act) reasonably incurred by it in such action.

(b) No Waiver. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in the Condominium Instruments constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

ARTICLE 7 **ASSESSMENTS**

7.1 Regular Assessments. Each Unit is subject to assessments for (i) the Unit's Common Allocation of all Common Regular Expenses pursuant and subject to 2.10(b), and (ii) its share of all Limited Regular Expenses incurred by the Association for its benefit pursuant and subject to Section 2.10(c) (collectively, "**Regular Assessments**"). Regular Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Budget and Payment. The Board will assess annual Regular Assessments against each Unit based upon the budget adopted by the Board and not vetoed by the Owners pursuant to the Act in accordance with Section 2.10(b). Each Owner is obligated to pay to the Association the annual Regular Assessments made against such Owner's Unit, and the payment may be due in equal monthly or quarterly installments on or before the first day of each month or quarter during each Fiscal Year or in another reasonable manner designated by the Board.

(b) Adjustment. If, during any Fiscal Year, the Board determines that the estimated expenses or revenues of the Association, as set forth in the budget upon which the Regular Assessments were based, are in error for any reason (including, without limitation, nonpayment by any Owner of its Regular Assessments), then, to the extent the Board estimates that payments of Regular Assessments during the balance of the Fiscal Year will be inadequate or more than required to meet the Association's obligations intended to be covered by such Regular Assessments, the Board may amend the budget and increase or decrease the Regular Assessments for the balance of such Fiscal Year by following the same procedure for adoption of an annual budget pursuant to Section 6.9.

(c) Reconciliation. After the end of each Fiscal Year, the Board may, but shall not be required to, reconcile the actual Common Regular Expenses and Limited Regular Expenses incurred by the Association during that Fiscal Year against the Regular Assessments that the Association received and intended to cover the costs and expenses. If the Board undertakes such a reconciliation, then to the extent that any Owner has paid more than its proper share of the costs and expenses, the Board may elect, in its sole discretion to: (i) refund the overpayment to the Owner; or (ii) credit the overpayment against the Owner's Regular Assessments for the next Fiscal Year; or (iii) deposit the

overpayment into the Reserve Fund maintained by the Association if overpayments were received from all Owners in proportion to each Owner's Common Allocation.

7.2 Special Assessments. Acting through the Board, the Association may levy from time to time one or more special assessments ("**Special Assessments**") for the purpose of defraying in whole or in part the cost of any reasonably necessary construction, restoration, unexpected repair or replacement of a capital or other improvement or for carrying out the other responsibilities of the Association in accordance with this Declaration. Each Special Assessment will be allocated among the Units in accordance with the provisions Sections 7.2(a) through (e). Each Owner will pay all Special Assessments assessed against the Owner's Unit. Special Assessments will be paid at the time(s) and in the manner (for example, by lump sum payment or in installments) reasonably determined by the Board.

(a) Common Special Expenses. If the Association incurs any reasonably necessary unforeseen costs or expenses that benefit all Units but that were not included in the applicable annual budget and are therefore not included in Regular Assessments ("**Common Special Expenses**"), then the Board, in its discretion, may assess the Common Special Expenses as a Special Assessment against each Unit in proportion to each Unit's Common Allocation. The Board may assess Special Assessments for Common Special Expenses without the approval of the Owners.

(b) Limited Special Expenses. If the Association incurs any reasonably necessary unforeseen costs or expenses that solely benefit one or more Units but less than all Units and that were not included in the applicable annual budget (such as, for example, the costs of repairing damage to Elevator 1 not covered by insurance) ("**Limited Special Expenses**"), then the Board, in its reasonable discretion, may assess the Limited Special Expenses as a Special Assessment against the Unit or Units benefited by such Limited Special Expenses as follows: (i) any Limited Special Expenses incurred for the benefit of only one Unit will be assessed solely to that Unit; and (ii) any Limited Special Expenses incurred for the benefit of two or more Units will, unless the Owners of all benefited Units otherwise agree to a different proportion, be assessed against each benefited Unit in proportion to the ratio of the Unit's Common Allocation to the sum of the Common Allocations of all benefited Units. The Board may assess a Special Assessment for Limited Special Expenses without the approval of the affected Owners; provided, however, that a proposed Special Assessment against the Residential Owners must receive the affirmative vote of the Residential Directors and a proposed Special Assessment against the Commercial Owners must receive the affirmative vote of the Commercial Director.

(c) Reimbursable Expenses. If the Association incurs any costs or expenses as a result of or in connection with (i) the cost of separately metered utilities or Central Mechanical Equipment services pursuant to Section 5.1(b)(ii); (ii) an increase in any insurance premium for which an Owner is responsible pursuant to Section 9.1(a); (iii) the willful misconduct or negligence or violation of any law or the Condominium Instruments by an Owner or its Permittees; or (iv) subject to Sections 4.12 and 5.1(e), bringing an Owner or the Owner's Unit into compliance with the provisions of the Condominium Instruments; then, in each such event, the Board will assess the costs and

expenses (“**Reimbursable Expenses**”) as a Special Assessment against the Owner’s Unit. The Board may assess Special Assessments for Reimbursable Expenses without the approval of the Owners.

(d) Restoration Deficits. If following any damage, destruction or taking by eminent domain of the Common Elements, or any portion of them, the total costs of performing any restoration of the Common Elements required by this Declaration or the Act exceeds the amount of the insurance proceeds, condemnation award or other funds available for the cost of restoration (such as funds in the Reserve Fund), then the Board may assess Special Assessments to cover the deficit (a “**Restoration Deficit**”). With respect to any Restoration Deficit concerning a General Common Element, the Board will assess the Restoration Deficit against each Unit in proportion to its Common Allocation. With respect to any Restoration Deficit concerning a Limited Common Element, the Board will assess the Restoration Deficit against each Unit to which such Limited Common Element is allocated pursuant to a fraction, the numerator of which is such Unit’s Common Allocation and the denominator of which is the sum of the Common Allocations of all the Units to which such Limited Common Element is allocated. The Board may assess Special Assessments for a Restoration Deficit without the approval of the Owners.

(e) Voluntary Capital Expenses. Provided the requisite number of Owners approve the same as provided below, the Board may make Special Assessments for the purpose of paying Voluntary Capital Expenses. “**Voluntary Capital Expenses**” means all costs and expenses of any capital improvement to the Common Elements, including all design, construction and associated financing costs, except for (i) costs incurred in order to reduce Common Regular Expenses (which costs will be included in Common Regular Expenses); (ii) costs required to be incurred to cause the Condominium Project to comply with applicable law (which costs will be included in Common Regular Expenses); (iii) costs that constitute all or any part of a Restoration Deficit; and (iv) costs for cleaning, maintaining, replacing and repairing the Common Elements in accordance with the requirements of this Declaration and/or the Act. Any proposal before the Association (or Owners) to make a Special Assessment for Voluntary Capital Expenses must include provisions describing whether all of the Units, or one or more but less than all of the Units, will be subject to the Special Assessment. If less than all of the Units will be subject to such Special Assessment (*e.g.*, because such Special Assessment will be for the improvement of a Limited Common Element), the proposal will also include provisions describing which Units will be subject to such Special Assessment and the manner in which the total amount of the Special Assessment will be allocated among the Units subject to it. Approval of any Special Assessment for Voluntary Capital Expenses requires the affirmative vote of (A) if all of the Units will be subject to the Special Assessment, at least more than 50% of the votes in the Association, including at least more than 50% of the votes allocated to the Commercial Units and at least more than 50% of the votes allocated to the Residential Units; or (B) if less than all of the Units will be subject to the Special Assessment, at least more than 50% of the votes in the Association that are allocated to the Units that will be subject to the Special Assessment. If the requisite affirmative vote of Owners is obtained, the Board will assess the total amount of a Special Assessment for Voluntary Capital Expenses against (1) all of the

Units, if all of the Units are subject to the Special Assessment pursuant to the approved proposal, by allocating to each its Common Allocation of the whole; or (2) the Units subject to the Special Assessment pursuant to the approved proposal, by allocating to each the portion of the Special Assessment specified in the approved proposal.

(f) Protection of Affordable Housing Owners. Notwithstanding the foregoing, no Owner of an Affordable Housing Unit shall be required to pay any portion of a Common Special Expense, a Limited Special Expense or a Voluntary Capital Expense that (i) is not reasonably required to be incurred by the Association for the purpose of fulfilling the Association's obligations under this Declaration or applicable law; (ii) is being incurred for any service, improvement or other item that either does not benefit the Owners of the Affordable Housing Units or will not be available for use by the Owners of the Affordable Housing Units; or (iii) is for the purpose of raising funds that are required due to the Association's failure to provide for an adequate Reserve Fund as required by Section 6.9(a). The provisions of this paragraph shall not be amended without the prior written consent of the Aspen/Pitkin County Housing Authority.

7.3 Payment of Assessments; Notice and Acceleration. Each Owner will pay all Regular Assessments, Special Assessments and all "**Delinquency Costs**" (as defined below) (collectively, "**Assessments**") assessed against such Owner's Unit by the Association in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Unit the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner's obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or of Declarant or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within 30 days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the "**Delinquency Costs**"): (i) interest from the date due at the rate of 18% per annum, provided the Board may waive such interest in whole or in part in its reasonable discretion; (ii) late charges and other monetary penalties imposed by the Association pursuant to this Declaration and the Act; and (iii) all collection and enforcement costs, including reasonable attorney fees, incurred by the Association. If an Assessment or installment of an Assessment is delinquent, the Association will notify the Owner of the delinquency and state in the notice all items required by C.R.S. § 38-33.3-209.5(5)(a)(V) and the following: (A) the amount and due date of the delinquent Assessment or installment; (B) the Delinquency Costs accrued to date; (C) the date by which the delinquent Assessment or installment and all associated Delinquency Costs must be paid, which date may be not earlier than the later of 60 days from the due date of the Assessment or installment or 30 days from the date the notice is given; (D) whether the Owner is eligible to enter into a payment plan with the Association and under what terms; and (E) that failure to enter into and comply with a payment plan or pay the delinquent Assessment or installment and all associated Delinquency Costs by the date specified in the notice may result in acceleration of the balance of the Assessment or installments for the current Fiscal Year and the foreclosure of the Association's lien for the Assessment or installments against such Owner's Unit. The Association shall make good faith efforts to coordinate a payment plan as required by C.R.S. § 38-33.3-316.3. If the Association complies with C.R.S. § 38-33.3-316.3 and gives such notice required herein and the delinquent Assessment or installment of an Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the

Board, at its option, may declare all unpaid installments of the subject Assessment for the current Fiscal Year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were so accelerated) in accordance with Section 7.4, subject, however, to the protection afforded First Mortgagees pursuant to Section 14.3(b).

7.4 Enforcement of Assessments. The amount of any delinquent Assessments (including any installments whose due dates are accelerated by the Board pursuant to Section 7.3 and associated Delinquency Costs may be enforced against the Owner liable for them in either or both of the following ways (to the extent permitted by law or regulation), at the option of the Association:

(a) Suit. The Association may bring a suit or suits at law to enforce the Owner's obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Board pursuant to Section 7.3) and associated Delinquency Costs. Each action will be brought in the name of the Association. The judgment rendered in the action will include a sum for reasonable attorney fees and costs incurred by the Association in bringing the action against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, will execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.

(b) Lien and Foreclosure. Assessments (including any installments whose due dates are accelerated by the Board pursuant to Section 7.3, and associated Delinquency Costs constitute a lien on the Units against which they are assessed from the date due. The lien is subject to the provisions of Section 38-33.3-316 of the Act. If an Assessment is delinquent, and if the Association gives a notice to the Owner and any Eligible Holder holding a First Mortgage secured by the Unit concerning the delinquency that substantially complies with the provisions of this Section 7.4, and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Board pursuant to Section 7.3, and any associated Delinquency Costs in accordance with the laws of the State of Colorado, subject, however, to the protection afforded First Mortgagees pursuant to Section 14.3(b). Further, the Association may apply *ex parte* for the appointment of a receiver.

7.5 Disputes and Records. Any Owner or an Owner's authorized representative may inspect the books and records of the Association during business hours upon reasonable prior notice. If an Owner disputes the amount of any Assessment against its Unit and is unable to resolve the issue through an inspection of the Association's books and records, the Owner will pay in a timely manner the full amount of the disputed Assessment unless and until it is finally determined by the Association that the amount is incorrect (in which case the Association will promptly refund any overpayment). If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and/or foreclosure of its Unit) and the pendency of the dispute is not a bar or defense to any actions by the Association.

7.6 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Elements, by abandonment of its Unit, or otherwise.

7.7 Declarant's Responsibility for Assessments. Until the Association levies Regular Assessments, Declarant will pay the Association's costs and expenses. Regular Assessments must be assessed no later than the conveyance of the first Unit to a purchaser in the ordinary course of business.

ARTICLE 8 **ALTERATIONS**

8.1 Permitted Unit Alterations. An Owner may, subject to the terms and provisions of this Article 8, construct an alteration, modification or improvement to its Unit (a "**Permitted Unit Alteration**") that:

(a) does not, either during construction or after completion, impair the structural stability, or building systems of or diminish the support of any portion of the Condominium Project; and

(b) does not adversely affect the Common Elements or any other Unit, except for such temporary increases in usage as are reasonable and necessary in view of the nature of the alteration or improvement; and does not, after completion, adversely affect in any manner the Common Elements or any other Unit.

Any change, addition, alteration or improvement of any Unit that does not constitute a Permitted Unit Alteration is prohibited (unless otherwise permitted pursuant to this Article 8) and may be enjoined by the Association, subject to the provisions of Section 4.12. In addition, and without limiting the foregoing, no Permitted Unit Alteration undertaken to any Unit shall, either during construction or after completion, change the appearance of the General Common Elements.

8.2 Reallocation of Parking Spaces. Following any allocation of Parking Spaces as Limited Common Elements among Commercial Units by Declarant pursuant to Section 2.7(g), the Owners of any of the subject Commercial Units shall have the right to reallocate the Parking Spaces allocated to their Commercial Units by the Recording of a written instrument signed by all such Owners. Such reallocation of Parking Spaces by the affected Commercial Owners shall not require any consent or approval by the Association, but the Commercial Owners will provide the Association with a copy of the Recorded written instrument.

8.3 Reallocation of Parking Spaces. Following any allocation of Parking Spaces as Limited Common Elements among Penthouse Units by Declarant pursuant to Section 2.7(f), the Owners of any of the subject Penthouse Units shall have the right to reallocate the Parking Spaces allocated to their Penthouse Units by the Recording of a written instrument signed by all such Owners. Such reallocation of Parking Spaces by the affected Penthouse Unit Owners shall not require any consent or approval by the Association, but the Penthouse Unit Owners will provide the Association with a copy of the Recorded written instrument.

8.4 Construction. Any Owner(s) performing any construction or demolition work relating to a Permitted Unit Alteration will comply with the following additional provisions:

(a) such Owner(s) will obtain all necessary permits and governmental authorizations for the Permitted Unit Alteration;

(b) the Permitted Unit Alteration and the construction of it will comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(c) such Owner(s) will cause the Permitted Unit Alteration to be constructed and completed free and clear of all mechanics' and materialmen's liens and other claims;

(d) during the construction process, such Owner(s) will, to the extent consistent with good construction practice, keep any Common Elements area affected in a safe, neat and clean condition;

(e) such Owner(s) will reimburse the Association for all costs incurred by the Association in connection with the Permitted Unit Alteration, such as without limitation the increase in costs of trash removal due to the performance of the Permitted Unit Alteration work; and

(f) such Owner(s) will pay or cause to be paid all costs of design and construction of the Alteration.

Nothing in the preceding provisions of this Section 8.3 is intended to give, or shall be construed as giving, the Association the power, authority or discretion to prevent a Commercial Owner from making any improvements, alterations or modifications to such Commercial Owner's Commercial Unit. In addition, nothing in the preceding provisions of this Section 8.3 is intended to give, or shall be construed as giving, the Association any architectural or design review control over any improvements, alterations or modifications undertaken by a Commercial Owner to its Commercial Unit.

8.5 Alteration of Common Elements.

(a) Except to the extent permitted by the Commercial Owners pursuant to Section 5.2, no Owner or Owner's Permittee may construct anything upon, remove anything from, or alter any of the Common Elements, or paint, decorate or landscape any portion of the Common Elements. Without limiting the generality of the previous sentence, no Owner or Owner's Permittee may do anything which adversely affects (i) the structural stability or building systems of the Condominium Project; or (ii) any Easement or right granted pursuant to this Declaration.

(b) The Association may construct an alteration or improvement to a Common Element (a "**Common Alteration**") if (i) the Common Alteration does not permanently impair the structural stability or building systems of or lessen the support of any portion of the Condominium Project (provided, however, that any impairment will not be deemed permanent if it is susceptible of being cured and will be cured by the proposed Common

Alteration); and (ii) the cost of the Common Alteration constitutes a Common Regular Expense and a budget that includes such cost is ratified by the Owners pursuant to Section 6.9, or the cost of the Common Alteration constitutes a Voluntary Capital Expense and a Special Assessment is approved pursuant to Section 7.2. The Association will comply with the provisions of Section 8.3 (except Section 8.3(e)) in constructing any Common Alteration, as if the Association were an Owner.

8.6 Alterations by Declarant. Nothing in this Article 8 restricts or prohibits Declarant from making any alteration or improvement that Declarant has reserved the right to make pursuant to this Declaration.

ARTICLE 9 **INSURANCE**

9.1 Association's Insurance. The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 9.1 will be included in Common Regular Expenses:

(a) Property Insurance. The Association will maintain property insurance in amounts, against risks, and containing provisions as the Board reasonably determines from time to time. At a minimum, the Association's insurance will insure against all risks of direct physical loss for 100% of the full replacement cost (at the time the insurance is purchased and at each renewal date) of (i) the Common Elements and all fixtures, improvements and alterations situated on or constituting a part of the Common Elements, and (ii) any personal property of the Association situated in the Common Elements or used in the operation or maintenance of the Common Elements. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners, who shall be named as additional insureds, and Security Holders, who may be named as additional insureds, as their interests may appear. To the extent available such property insurance also will (A) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (B) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims against each Owner and the members of the Owner's household; (C) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (D) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration or the Act; (E) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (F) provide that it may not be canceled, nor may coverage be reduced, without 30 days prior notice to the Association and all additional insureds named in the policy; and (G) include so-called "inflation guard," "building ordinance or law" and "steam boiler

and machinery coverage” endorsements. If, as a result of any improvements or alterations made to a Unit by its Owner, the premium for the Association’s property insurance policy is increased to an amount exceeding what the premium would have been if the Owner had not made the improvements or alterations, the Board may assess the amount of the increase in premium against the Owner’s Unit as a Reimbursable Expense pursuant to Section 7.2(c).

(b) Liability Insurance. The Association will obtain and maintain comprehensive liability insurance for bodily injury and property damage for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Elements. Such liability insurance will have an aggregate limit of not less than \$2,000,000 and, to the extent available on reasonable terms, will (i) be on a commercial general liability form; (ii) contain a “severability of interest” or “cross-liability” endorsement which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (iv) provide that no act or omission by any Owner, unless acting within the scope of such Owner’s authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (v) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Common Elements; and (vi) provide that it may not be canceled, nor may coverage be reduced, without 30 days’ prior notice to the Association and all additional insureds named in the policy. The liability insurance required to be maintained under this Section 9.1(b) will not include coverage for any liability arising out of the operation, use, ownership or maintenance of any Unit.

(c) Worker’s Compensation and Employer’s Liability. If the Association has any employees, the Association will obtain and maintain worker’s compensation and employer’s liability insurance as determined from time to time by the Board. At a minimum, the Association will maintain such insurance in amounts and with coverages required by applicable law.

(d) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association will maintain comprehensive automobile liability insurance at a limit of liability of not less than \$500,000 for combined bodily injury and property damage.

(e) Directors’ and Officers’ Insurance. The Association will obtain and maintain directors’ and officers’ liability coverage in the amount it determines from time to time.

(f) Fidelity Insurance. The Association will maintain fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the

Association's directors, officers, managing agents, trustees, employees or volunteers who manage the funds collected and held for the benefit of the Association. The policy will name the Association as the insured, include a provision requiring at least 10 days' written notice to the Association before any cancellation of, or material modification in, the policy, and provide coverage in an amount equal to at least two months' Regular Assessments against all Units, based on the Regular Assessments most recently approved by the Board. If the Association engages a managing agent that handles funds of the Association, the managing agent will also maintain fidelity insurance satisfying the foregoing requirements of this Section and the Act and provide evidence of the coverage to the Board.

(g) Other Insurance. The Association may procure and maintain other insurance as the Board from time to time deems appropriate to protect the Association or the Owners.

(h) Licensed Insurers. All policies of insurance required to be maintained by the Association will be placed with insurers licensed in the State of Colorado. The carrier shall be required to provide to the Board at the inception of the policies and on each anniversary date, a summary that includes a description of the type of policy, the coverage and limits of coverage, the amount of annual premium and the policy renewal dates. If obtainable without additional expense, the licensed insurance broker or agent shall certify that the policy complies with and satisfies the requirements of this Section.

9.2 Owners' Insurance. Each Owner has the following responsibilities with respect to insurance:

(a) Property Insurance. Each Owner will maintain at its expense property insurance upon the Owner's Unit and all personal property and fixtures within the Owner's Unit or in any Limited Common Element allocated exclusively to the Owner's Unit, in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time. Such property insurance will (i) permit a waiver of claims by the Owner and provide for a waiver of subrogation rights by the insurer as to claims against the Association, its directors, officers, employees and agents, and the other Owners and the members of such Owners' households; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association carries; and (iii) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect not to restore the damage in accordance with the provisions of this Declaration or the Act. Notwithstanding that each Owner may select the amount and type of such insurance, for purposes of the waiver of claims set forth in Section 9.4, each Owner is deemed to have elected to obtain such insurance on a 100% replacement cost basis.

(b) Liability Insurance. Each Owner will maintain at its expense bodily injury and property damage liability insurance for the benefit of the Owner and any additional insureds it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; provided that such liability insurance

will (i) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association or another Owner carries; and (ii) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Owner's Unit.

(c) Other Insurance. Each Owner may obtain additional insurance, at its own expense, affording personal property, condominium assessment, loss of rents, personal liability and any other coverage obtainable, to the extent and in the amount the Owner deems necessary to protect its interests.

(d) Assignment of Proceeds. If a casualty loss is sustained and there is a reduction in the amount of proceeds that would otherwise be payable under any policy of insurance carried by the Association due to the existence of any insurance carried by an Owner, that Owner is liable to the Association to the extent of the reduction and will pay the amount of the reduction to the Association upon demand; such Owner also hereby assigns the proceeds of its insurance, to the extent of such reduction, to the Association.

9.3 Certificates of Insurance; Notices of Unavailability. The Association will provide to each Owner, upon request, certificates of insurance evidencing the insurance required to be carried by the Association under Section 9.1. If the insurance described in Sections 9.1(a) and 9.1(b) is not reasonably available, or if any policy of such insurance is canceled or not renewed and the Association does not obtain a replacement policy for it, the Association promptly will give notice of the fact to all Owners.

9.4 Waiver of Claims. Except as otherwise provided in the Condominium Instruments, the Association will make no claim against any Owner or the members of the Owner's household for any loss, damage, injury or liability; and no Owner will make any claim against Declarant, the Association, their managers, members, directors, officers, employees or agents, or any other Owner or member of such Owner's household for any property loss or damage to property, and all such claims and rights of subrogation with respect to such claims are hereby waived, to the extent that the loss, damage, injury or liability is or would be covered by any property insurance that is actually maintained by the waiving Person or that is required under this Declaration to be maintained by or for the benefit of the waiving Person (assuming that such insurance policy is maintained on a 100% replacement cost basis). For purposes of this Section 9.4, the deductible or self-insurance amount under any property insurance policy required to be, or in fact, maintained by a waiving Person is deemed to be covered by the policy so that, in addition to waiving claims for amounts in excess of the deductible or self-insurance retention (up to the covered limits, or deemed covered limits, of the policy), the waiving Person waives all claims for amounts within the deductible or self-insurance retention.

9.5 Proceeds. Except as provided in Section 9.2(d), the Association has no claim to, and each Owner may receive, all proceeds of any insurance policy maintained by such Owner. The Board is solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Security Holders and other Persons having an interest in the Condominium Project for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and

delivering releases when claims are paid. The Association may receive all proceeds of any insurance policy maintained by the Association, except other insured parties under liability insurance policies will be entitled to proceeds arising out of their insured losses. The Association will hold any proceeds of any property insurance it maintains in trust for the Owners and Security Holders. The Board will disburse the proceeds of any property insurance relating to damage to any Unit or Common Element in accordance with Section 10.2.

ARTICLE 10 **CASUALTY**

10.1 Restoration Decision. If any Unit or Common Element is damaged or destroyed by fire or other casualty (a “**Casualty**”), the provisions of this Article 10 apply. Promptly after any Casualty occurs, the Board will obtain at least two bids from licensed contractors for the full and lawful repair and restoration of all damaged Units and Common Elements. Upon receiving the bids and after sufficient discussions with the adjuster for the Association’s insurer, the Board will notify the Owners of the amounts of the bids, the probable amount of insurance proceeds and other funds (such as funds in the Reserve Fund) that are available for restoration, and whether, based on that information, the Board believes a Restoration Deficit will result if the Owners elect to fully restore all damaged Units and Common Elements. In the notice, the Board will also call a meeting of the Owners to vote on the question of whether to fully restore all damaged Units and Common Elements. The Association will fully restore the damaged Units and Common Elements to their condition prior to the Casualty and as required by law (provided that each Owner will be responsible for restoring and replacing all improvements, fixtures, furniture and equipment within his, her or its Unit), and the Board will promptly enter into construction contracts and proceed with the restoration work, unless at the meeting:

(a) The Condominium Project is terminated under a Termination Agreement made pursuant to Article 11 and, prior to the stated expiration of the Termination Agreement, it becomes effective according to the provisions of Section 11.1; or

(b) Each First Mortgagee that holds any First Mortgage encumbering any Unit and Owners holding at least 75% of the votes in the Association, including the Owner of any Unit whose boundaries will be changed or the use or enjoyment of which (including its allocated Limited Common Elements) will be prevented or materially impaired as a result of not fully restoring all damaged Units and Common Elements, vote (i) not to fully restore all damaged Units and Common Elements and not to terminate the Condominium Project; (ii) to approve plans and specifications for a limited restoration that will restore the damaged area to a condition compatible with the remainder of the Condominium Project and that may include, without limitation, demolition, restoration or alteration of all or part of any damaged Unit or Common Element; and (iii) to adopt, if applicable, an amendment to this Declaration and to the Map to reflect the conversion of all or part of one or more damaged Unit(s) to Common Elements or of all or part of one or more damaged Common Element(s) to one or more Unit(s) and the corresponding reallocation of votes and interests allocated to the Units pursuant to this Declaration (which reallocation will be based on the same formulas set forth in this Declaration for the allocations being changed).

If the Condominium Project is terminated and a Termination Agreement becomes effective pursuant to Section 11.1, the Association will perform limited restoration of the Units and Common Elements as necessary to return them to a safe, lawful and saleable condition. If the Owners vote not to fully restore all damaged Units and Common Elements and not to terminate the Condominium Project, the Association will perform the limited restoration and Record the amendment to this Declaration, if any, approved by the requisite number of Owners pursuant to Section 10.1(b). If, however, the Owners elect to fully restore all damaged Units and Common Elements, the Board will assess a Special Assessment pursuant to Section 7.2(d) to the extent necessary to cover any Restoration Deficit.

10.2 Disposition of Insurance Proceeds. All proceeds of property insurance received by or disbursed to the Association in connection with a Casualty will be applied first to the full or limited restoration of the damaged Units and Common Elements, as provided in Section 10.1, and then, if any insurance proceeds remain after the full or limited restoration, the excess proceeds will be paid to the Owners, subject to the rights of their Security Holders, as follows:

(a) if the Owners elect not to fully restore all damaged Units and Common Elements and to terminate the Condominium Project pursuant to Article 11, then each Owner will be paid its Unit's Termination Allocation of the excess proceeds pursuant to Section 11.3;

(b) if the Owners elect not to fully restore all damaged Units and Common Elements and not to terminate the Condominium Project, then any of such excess proceeds attributable to any damaged Units that are not restored or to any Common Elements that are not restored and were necessary for the use and enjoyment of any Units or Limited Common Elements that are not fully restored will be paid to the Owners of these Units or the Owners of the Units to which those Limited Common Elements are allocated to the extent of the insurance coverage allocated to those Units or Common Elements, and each Owner will be paid its Unit's Common Allocation of the remainder of the excess proceeds, if any; or

(c) if the Owners elect to fully restore all damaged Units and Common Elements, then each Owner will be paid its Unit's Common Allocation of the excess proceeds.

10.3 Manner of Restoration. The restoration of any Unit or Common Element under this Article 10 is subject to the following requirements:

(a) Plans. Except in the case of a limited restoration in accordance with Section 10.1(a) or 10.1(b), the restoration will be completed in accordance with the as-built plans and specifications of the Unit or Common Element immediately prior to the damage. Any deviation from the as-built plans and specifications is deemed an alteration and is subject to the terms and provisions of Article 8.

(b) Requirements. The Association will:

(i) obtain all necessary permits and governmental authorizations for the restoration;

(ii) comply with all applicable zoning and building codes and other applicable laws, ordinances and restrictive covenants;

(iii) perform the restoration in a diligent, good and workmanlike manner, free and clear of all mechanics' and materialmen's liens and other claims;

(iv) during the construction process, to the extent required by good construction practices, keep the area affected thereby in a safe, neat and clean condition;

(v) minimize any impact from the construction process on other Units or Common Elements;

(vi) hire an independent project manager who is experienced in similar construction or reconstruction projects; and

(vii) perform any restoration or construction work, or cause such work to be performed, in a manner that maintains harmonious labor relations and does not interfere unreasonably with or delay the work of any other contractors then working anywhere on the Condominium Project.

(c) Coordination by Association. The Association has full authority and responsibility to coordinate the manner of completion and scheduling of any restoration under this Article 10 to ensure the completion of the restoration in an efficient manner. Each Owner will cooperate and cause its contractors and agents to cooperate in the Association's coordination of any restoration. As used in this Article 10, a "restoration" will include any repair, replacement, restoration, reconstruction, construction or demolition required as a result of any damage or destruction.

10.4 No Abatement. Each Unit will continue to be subject to Assessments following any damage to or destruction of any portion of the Condominium Project, without abatement or modification as a result of the damage or destruction.

ARTICLE 11 **TERMINATION**

11.1 Termination Agreement. The Condominium Project may be terminated only pursuant to a written agreement to terminate executed and acknowledged (or ratified and acknowledged in writing) by all of the Owners, and each First Mortgagee that holds any First Mortgage encumbering any Unit (a "**Termination Agreement**"). A Termination Agreement is effective when (a) the required First Mortgagees and all of the Owners have executed and acknowledged it or a ratification of it, and (b) the Termination Agreement and all ratifications, if any, are Recorded. A Termination Agreement will state a date after which it is automatically void unless it is effective by that date. A Termination Agreement will also state that, when it becomes effective, the Condominium Project is deemed terminated and the Association will sell the Condominium Project, including all Units and Common Elements, on behalf of all Owners,

upon terms and conditions of sale approved by the Board, provided that those terms will be at least as favorable as the minimum terms set forth in the Termination Agreement.

11.2 Sale of Condominium Project. When a Termination Agreement becomes effective, the Condominium Project is deemed terminated, the Association will sell the entire Condominium Project (i.e., all Units and all Common Elements) for the benefit of the Owners, and the resulting sales proceeds will be allocated in accordance with Section 11.3. Upon approval of a Termination Agreement, (a) each Owner (including dissenting Owners) is deemed to grant the Association, acting through its officers under the authority of the Board, an irrevocable power of attorney, coupled with an interest, to sell the Condominium Project for the benefit of the Owners, and (b) accordingly, the Association has full and complete authority, right and power to make, execute and deliver any contract, deed or other instrument necessary and appropriate to accomplish that purpose. Notwithstanding the termination of the Condominium Project, the Association (and its officers and the Board) will continue to exist and hold office, respectively, with all of its and their powers specified in this Declaration and the Bylaws (including, without limitation, the power to impose Assessments) until the Condominium Project is sold and all proceeds (i.e., sales proceeds and, if applicable, insurance proceeds or condemnation proceeds) are distributed. Unless otherwise specified in the Termination Agreement or otherwise precluded by law, until a sale of the Condominium Project is concluded, each Owner has an exclusive right to occupy its former Unit and remains liable for all Assessments and other obligations imposed on the Owner pursuant to this Declaration.

11.3 Proceeds. The Association will pay to each Owner its Unit's Termination Allocation of the net proceeds of the sale of the Condominium Project following termination of the Condominium Project (together with any insurance proceeds or condemnation proceeds). However, no payment will be made to an Owner until all liens on its Unit are paid out of the Owner's share of the proceeds, in the order of priority of such liens. A Unit's "**Termination Allocation**" means the percentage obtained by dividing the fair market value of the Unit by the total fair market values of all of the Units. The valuation date used in determining the fair market value of each Unit is the date immediately prior to the date the Termination Agreement becomes effective (or, if the termination is attributable to a Casualty where the Owners elect to terminate the Condominium Project pursuant to Section 10.1(a), the valuation date is the date immediately prior to the date on which the Casualty occurred). The fair market value of each Unit as of the appropriate valuation date will be determined by one or more independent appraisers selected by the Board. The Association will distribute to the Owners the values determined by the independent appraisers. Those values are final and binding on all Owners for purposes of establishing the Termination Allocations unless within 30 days after distribution they are disapproved by the Owners of Units to which at least 75% of the votes in the Association are allocated.

ARTICLE 12

MOLD DISCLOSURE

Mold, mildew, fungi, bacteria and microbiologic organisms (collectively, "**Mold**") are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Declarant and the Association recommend that each Owner, at the Owner's expense,

conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his or her family members, and others individuals who will occupy or use the Unit, any Patio, the Limited Common Elements which the Owner is required to clean, repair or maintain, and the Limited Common Elements located within the Unit or servicing that Unit and others (for purposes of this Article 12, the “**Unit and Adjacent Limited Common Elements**”) may have with respect to Mold, and methods to reduce or limit Mold within the Owner’s Unit and Adjacent Limited Common Elements.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Unit, agrees to maintain the Unit and Adjacent Limited Common Elements in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner, by taking title to a Unit, agrees to make periodic inspections of the Unit and Adjacent Limited Common Elements for the presence of Mold or conditions which may increase the ability of Mold to propagate within the Unit and Adjacent Limited Common Elements and to monitor the Unit and Adjacent Limited Common Elements on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the Unit or Adjacent Limited Common Elements, the Owner shall immediately seek to eliminate the source of the water or moisture and shall also immediately notify the Association of such condition and shall make access to the Unit and Adjacent Limited Common Elements available to the Association for its inspection. To the extent the Association chooses to undertake any maintenance, repair and improvement necessary to lessen or eliminate the excessive moisture, water or Mold accumulation, within the Unit and Adjacent Limited Common Elements, or any other area affected by such water or moisture, the Owner shall, upon demand, reimburse the Association for such costs which may be assessed as a Special Assessment in accordance with Section 7.2(c).

ARTICLE 13 **AMENDMENT**

13.1 Required Votes.

(a) Declarant, without the vote or consent of the Board or the Owners, may amend this Declaration or the Map to correct clerical, typographical or technical errors.

(b) Declarant, without the vote or consent of the Board or the Owners, may amend the Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the U.S. Department of Housing and Urban Development, the Federal Housing Administration, the Veteran’s Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

(c) Amendments to this Declaration made by Declarant pursuant to Section 2.11 and 2.12 do not require the approval of the Board or the Owners and may be made unilaterally by Declarant.

(d) Except as otherwise expressly permitted under this Declaration and the Act, any amendment to this Declaration that creates or increases special Declarant rights (as defined in the Act), increases the number of Units, changes the boundaries of any Unit, or changes the Allocated Interests of any Unit requires the vote or agreement of the Owners of Units to which at least 67% of the votes in the Association are allocated, including at least 67% of the votes allocated to Units not owned by the Declarant.

(e) Except as otherwise expressly permitted under the Act, any amendment to this Declaration that changes the uses to which any Unit is restricted requires the vote or written agreement of the Owners of Units to which at least 67% of the votes in the Association are allocated.

(f) Any amendment to this Declaration that changes a specific clause or provision prescribing a certain percentage of affirmative votes or written consents for action to be taken under that clause or provision, requires the affirmative vote or written consent of those Owners of Units to which at least that percentage (as prescribed in that clause or provision) of the votes in the Association are allocated to whom such right of consent is granted.

(g) Any amendment to this Declaration made during the Declarant Control Period affecting a right that Declarant may exercise during that period or any amendment to this Declaration made during the Declarant Development Period affecting a right that Declarant may exercise during that period requires the written approval of Declarant in each case.

(h) Except as otherwise provided in this Section 13.1, this Declaration may be amended by at least 67% of the votes in the Association or written consent of all the Owners of Units to which at least more than 67% of the votes in the Association are allocated, including at least more than 50% of the votes allocated to the Commercial Units and at least more than 50% of the votes allocated to the Residential Units.

(i) The foregoing provisions shall not limit the provisions of this Declaration requiring the prior approval of the Aspen/Pitkin County Housing Authority for certain amendments to this Declaration in certain circumstances as set forth in the City Council Ordinance No. 32, Series of 2013, recorded on September 5, 2013 as Reception No. 603228 in the Pitkin County Clerk and Recorder's Office and the Amended and Restated Subdivision Agreement for the Mill Building, dated March 28, 2014 and recorded on March 28, 2014 as Reception No. 608957 in the Pitkin County Clerk and Recorder's Office.

13.2 Amending Documents. Except for any amendment that by the terms of this Declaration may be and is duly executed, acknowledged and Recorded by Declarant or by or on

behalf of the Board, an amendment to this Declaration is effective only when all of the following events occur:

(a) Approved Writing. The amendment is reduced to a writing that is approved (by affirmative vote or written consent) by the Owners of Units to which at least the applicable required percentage of votes in the Association are allocated and the Declarant as the case maybe.

(b) Certificate by Association. A written certificate, executed and acknowledged by the president or any other authorized officer of the Association, is attached to the written amendment which states that the amendment was approved by the applicable required percentage of Owners and Declarant, as the case may be pursuant to Section 13.1.

(c) Recording. The approved written amendment described in Section 13.2(a) and the certificate described in Section 13.2(b) are Recorded.

13.3 Presumption of Validity. After an amendment to this Declaration is Recorded, a presumption exists that all votes and approvals regarding the amendment were duly obtained and satisfy the requirements of this Declaration. The presumption may be rebutted by an action commenced within one year from the date the amendment is Recorded; in the absence of an action commenced within the one-year period, the presumption is deemed conclusive.

ARTICLE 14 **CONVEYANCING AND ENCUMBRANCING**

14.1 Unit. Any conveyance of a Unit includes the Allocated Interests allocated to the Unit under this Declaration, and the rights to use Limited Common Elements allocated to such a Unit regardless of whether the same are specifically described in the conveyance. A description of any Unit that sets forth (i) the identifying number of the Unit, (ii) the name of the Condominium Project, (iii) the date of Recording and the Recording data of this Declaration and the Map in the Records, and (iv) the county in which the Condominium Project is located is, if included in an otherwise proper instrument, sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only the Unit but also the Allocated Interests, any rights to use any Limited Common Elements, and all Easements, rights, other benefits and obligations allocated or appurtenant to the Unit as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of its ownership of a Unit. An Owner may encumber its Unit as it sees fit, subject to the provisions of this Declaration.

14.2 Common Elements. Except in the case of the termination of the Condominium Project, Common Elements or portions thereof may be conveyed or subjected to a lien or security interest by the Association in accordance with Section 38-33.3-312 of the Act; provided, however, that the conveyance or encumbrance of a Limited Common Element shall require the unanimous approval of the Owner(s) to whose Unit(s) such Limited Common Element is allocated. The conveyance or encumbrance does not affect the priority or validity of pre-existing encumbrances. Any net proceeds of the sale of a Common Element pursuant to this Section 14.2 will be credited against the Regular Assessments owed by the affected Owners in accordance

with their Allocated Interests. Reallocation of a Limited Common Element is not a conveyance or encumbrance and shall be done in accordance with Section 38-33.3-208(12) of the Act.

14.3 Transferee Liability.

(a) General. If any Unit is voluntarily or involuntarily transferred to any Person, the transferee of the Unit (the “**Transferee**”) is liable for all Assessments or Assessment installments against the Unit beginning as of the time of transfer; provided that the Transferee’s interest in the Unit is subject to the Association’s lien for any unpaid Assessments as of the date of the transfer pursuant to this Declaration.

(b) First Mortgage Foreclosure. Any First Mortgage is subject to the Association’s lien, and any First Mortgagee acquiring title to a Unit through foreclosure of a First Mortgage is liable, for any unpaid Assessments (i) which are delinquent at the time the First Mortgage is Recorded, and (ii) an amount equal to the Regular Assessments based on the budget adopted by the Association which would have become due, in the absence of any acceleration, during the six months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

(c) Reallocation. Without releasing the transferor from any liability for any unpaid Assessments, any unpaid portion of an Assessment which is not a lien by operation of Section 14.3(b) is part of the Common Expenses and collectible from all Owners liable for Common Expenses, including a Transferee or a First Mortgagee acquiring title to a Unit through foreclosure of a First Mortgage.

14.4 Statements of Unpaid Assessments. Within 14 days after receiving a written request from any Owner, Security Holder or a designee of either of them, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association’s registered agent, the Association will furnish to the requesting party, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, a certificate of unpaid Assessments executed by an officer of the Association and addressed to the requesting party, stating any then unpaid Assessments due from the requesting Owner or the Owner of the Unit encumbered by the requesting Security Holder’s Security for an Obligation, or stating that there are no unpaid Assessments due from such Owner, as the case may be. A certificate furnished by the Association pursuant to this Section 14.4 if it complies with Section 38-33.3-316(8) of the Act is binding on the Association, the Board and every Owner. If no such certificate is furnished to the Owner or Security Holder or their designees, delivered personally or by certified mail first-class postage prepaid, return receipt requested, the Association shall have no right to assert a lien upon the Unit for unpaid Assessments which were due as of the request. The Association may charge the Owner of any Unit for which such a certificate is furnished pursuant to this Section 14.4, and the Owner will pay, a reasonable fee for the preparation of the certificate in an amount determined by the Board from time to time. The term “**Assessment**” as used in this Section 14.4 shall include all sums due to the Association at the time such certificate is executed.

ARTICLE 15
RESIDENTIAL OWNERS' ACKNOWLEDGMENTS AND WAIVERS

15.1 Owner's Acknowledgments.

(a) Acknowledgments.

(i) Aspen Resort Activities. The Condominium Project is located in Aspen, Colorado, a destination resort with skiing, snowboarding, snowshoeing, mountain biking, hiking and other recreational and entertainment activities and facilities ("**Aspen Resort**"). The Aspen Resort areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance of the Aspen Resort area (the "**Resort Activities**"). The Resort Activities include, without limitation: (A) movement and operation of passenger vehicles (including, without limitation, buses, vans and other vehicles transporting passengers over adjacent streets and over, around and through the Aspen Resort areas), commercial vehicles, and construction vehicles and equipment; (B) activities relating to the construction, operation and maintenance of roads, trails, walkways, pedestrian malls and other facilities relating to the Aspen Resort areas (including, without limitation, grading and earth moving and other construction activities, construction, operation and maintenance of roads, snow-melting equipment, busses or other transportation systems, operation of vehicles and equipment relating to trash removal and snow removal); (C) activities relating to the use of the Aspen Resort area (including, without limitation, pedestrian traffic); (D) ski races, snowboarding exhibitions and other organized events and competitions relating to the Aspen Resort area; (e) concerts, open markets, fireworks displays, and other performances and special events; (f) restaurants, clubs, restrooms and other public use facilities; (g) public access to adjacent to the ski areas; (h) public parking facilities and the traffic related thereto; (i) and other activities permitted by law. The Aspen Resort Activities may occur during daytime and nighttime.

(ii) Construction Activities. The Condominium Project is located in an area that is subject to or near current and/or future construction activities relating to the development of adjacent properties and the Aspen Resort area (the "**Construction Activities**"). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances.

(iii) Commercial Activities. A variety of commercial activities are and will be conducted adjacent to the Condominium Project (the "**Commercial Activities**"). While the commercial uses in the Condominium Project are limited as set forth under Section 4.4(b), the Commercial Activities adjacent to the Condominium Project may generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Commercial Activities around the Condominium Project may include, without limitation: (A) retail sales; (B) meetings, conferences, banquets and other group events; (C) sales and rentals of

clothing, skis, ski-related equipment, other over-the-snow equipment, bicycles, and other recreational equipment; (D) indoor and outdoor restaurant and bar operations (including, without limitation, the sale of food and alcoholic and non-alcoholic beverages for consumption on and immediately adjacent to the Condominium Project and at other locations) and preparation of hot and cold food (through the use of barbecue grills, fire pits and other smoke and/or odor producing means) and beverages at indoor and outdoor facilities on and immediately adjacent to the Condominium Project; (E) sales of services relating to skiing, other over-the-snow activities, and other recreational activities (including, without limitation, tuning, waxing, repairing, mounting of bindings on, renting, storing and transporting skis, snowboards and similar equipment); (F) parking activities (including, without limitation, public parking); (G) the installation, operation and maintenance of illuminated and non-illuminated signage; and (H) any other uses or activities permitted by law. The Commercial Activities may occur during daytime and nighttime.

(iv) Traffic Activities and Parking. The Condominium Project is located adjacent to certain heavy traffic areas, including, without limitation, Mill Street and Bleeker Street and the Rio Grande parking garage (the “**Traffic Areas**”). The Traffic Areas are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances (the “**Traffic Activities**”). The Traffic Activities may include, without limitation: (A) noise and pollution associated with the use and maintenance of the Traffic Areas; (B) peak-time traffic congestion; and (C) public parking. The Traffic Activities may occur during daytime and nighttime.

(b) Waiver and Release. Each Owner, for itself and its successors and assigns, acknowledges that the Aspen Resort Activities, the Construction Activities, Traffic Activities, Commercial Activities, and the effects, impacts and disturbances generated by them may occur in and around the Condominium Project. Each Owner may not assert or claim any violation of this Declaration based on the existence or occurrence of the Aspen Resort Activities, the Construction Activities, Traffic Activities, Commercial Activities, or the effects, impacts and disturbances generated by them. Each Owner, for itself and its successors and assigns, forever waives and releases any actions or claims the Owner and its successors and assigns may have against the Declarant and its successors and assigns which in any way arise out of the impacts and disturbances generated from the Aspen Resort Activities, the Construction Activities, Traffic Activities, or the Commercial Activities.

(c) Disclaimer. The Declarant makes no representations, covenants or warranties to any Owner concerning the nature, scope, schedule or continuation of activities operated or conducted in or relating to the Aspen Resort area, Traffic Areas or the Commercial Activities. Each Owner, for itself and its successors and assigns, acknowledges that (i) the activities may be discontinued from time to time or permanently after the date of this Declaration; (ii) the activities may not be operated or conducted during the same hours, days or months as any schedule in effect or contemplated on the date of this Declaration; (iii) the activities may be conducted during

more hours (during both daytime and nighttime), days, and months than any schedule in effect or contemplated on the date of this Declaration; and (iv) more activities may be operated or conducted in the Aspen Resort area, Traffic Areas or the Condominium Project than occur or are contemplated on the date of this Declaration.

15.2 No View Easement. Each Owner acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Unit for light, view or air included in or created by this Declaration. Declarant makes no representations or warranties regarding any construction or development that may occur on neighboring properties or whether any such construction or development could block the light, view or air available to any Unit or Common Elements, including without limitation any Patio.

15.3 Security. NEITHER THE ASSOCIATION, DECLARANT, OR ITS AFFILIATES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE CONDOMINIUM PROJECT, AND NEITHER THE ASSOCIATION, THE DECLARANT NOR ITS AFFILIATES SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, THE DECLARANT AND ITS AFFILIATES ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, DECLARANT AND ITS AFFILIATES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN ON THE CONDOMINIUM PROJECT.

15.4 Inspection by Others; Waiver of Post Inspection Liability. It is hereby expressly understood and agreed by Declarant and by any Owner upon taking title to a Unit that Declarant relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Units and the Common Elements in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Declarant and each Owner further expressly understand and agree that, with respect to the Units and the Common Elements, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Declarant shall be deemed to have used its best efforts to construct such Units and Common Elements in compliance with the construction plans and all applicable building code requirements. EACH OWNER, BY TAKING TITLE TO A UNIT, HEREBY KNOWINGLY AND WILLINGLY WAIVES AGAINST DECLARANT AND ITS AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION. AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH

ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON ELEMENTS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE SHALL BE DEEMED UNINTENTIONAL WITH RESPECT TO DECLARANT. EACH OWNER HEREBY ACCEPTS, AND ASSUMES THE RISK OF ANY AND ALL DAMAGE OR DEFECTS OF OR TO EACH OF THE UNITS AND THE COMMON ELEMENTS, THE DISCOVERY OF WHICH IS MADE AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH UNITS OR SUCH COMMON ELEMENTS, EXCEPT TO THE EXTENT THAT SUCH OWNER MAY HAVE A CLAIM THEREFOR AGAINST ANY PARTY OTHER THAN DECLARANT OR ITS AFFILIATES. Notwithstanding the foregoing, any Owner who obtains a warranty from its seller at the closing of the applicable Unit shall be entitled to rely on said warranty for the duration of the warranty period.

15.5 Drainage and Soils Condition; Radon Gas.

(a) Acknowledgment. THE SOILS WITHIN COLORADO CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A UNIT OR A COMMON ELEMENT IF SUCH UNIT OR COMMON ELEMENT IS NOT PROPERLY MAINTAINED. EXPANSIVE SOILS CONTAIN CLAY MINERALS WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS. THE ADDITION OF MOISTURE TO LOW DENSITY SOILS CAUSES A RE-ALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) Waiver of Liability of Declarant. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST DECLARANT, ITS MANAGERS, MEMBERS, EMPLOYEES OR AGENTS FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE UNIT OR THE COMMON ELEMENTS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH SOIL CONDITIONS ON OR UNDER ANY COMMON ELEMENTS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

15.6 Mountain Conditions. By taking title to a Unit, each Owner acknowledges that ownership of real property in mountain areas involves certain inherent inconveniences. These include, but are not limited to: (a) dripping water onto decks and porches from snowmelt, (b) snow and ice build-up on roofs, decks and porches during winter months, and the need to remove snow and ice to prevent leaking or damage to these structures, (c) the need to maintain the internal temperature of the Unit at a minimum temperature of 55 degrees in order to prevent broken pipes, and (d) other inconveniences arising from the sometimes severe winter conditions.

15.7 Sound Transmission Disclaimer and Waiver. EACH OWNER ACKNOWLEDGES THAT: (i) IT IS NOT UNCOMMON IN CLOSE OCCUPANCY SITUATIONS, SUCH AS IN CONDOMINIUMS, FOR ONE TO HEAR NOISES FROM OTHER UNITS OR OUTSIDE NOISES; (ii) SOUND TENDS TO CARRY THROUGH PIPES, AIR- CONDITIONING, HEATING, STUDS AND FLOORING; (iii) SOUND TRANSMISSION IS HIGHLY SUBJECTIVE; (iv) SOME OR ALL UNITS WITHIN THE BUILDING WILL HAVE SOME TILE OR OTHER HARD FLOORING AND THIS TYPE OF FLOORING PROVIDES LESS IMPACT ISOLATION THAN A CARPETED FLOOR, THEREFORE NOISE FROM SUCH HARD SURFACE FLOORING WILL HAVE GREATER AUDIBILITY; (v) THE BUILDING IS LOCATED NEAR BUSY ROADS; (vi) IN ANY ENVIRONMENT, DESPITE SOUND INSULATION, CERTAIN NOISES WILL INEVITABLY RESULT FROM ADJOINING UNITS AND COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, THE SOUND OF PLUMBING, NOISE AND IMPACT SOUNDS (LIKE FOOTFALL) FROM ADJOINING AREAS INCLUDING PROPERTIES ABOVE AND BELOW THE UNIT AND IN THE COMMON ELEMENTS; (vii) AND SOUND FROM COMMON ELEMENT EQUIPMENT INCLUDING BUT NOT LIMITED TO MECHANICAL AND PLUMBING SYSTEMS, AND ELECTRICAL EQUIPMENT MAY BE AUDIBLE WITHIN THE UNITS. THE WALLS OF THE UNITS, INCLUDING THE DEMISING WALL ASSEMBLIES AND FLOOR CEILING ASSEMBLIES, HAVE BEEN DESIGNED TO MEET THE APPLICABLE ACOUSTICAL CODE REQUIREMENTS FOR AIRBORNE AND IMPACT SOUND ISOLATION IN THE STATE OF COLORADO, BUT THE UNITS IS ARE NOT “SOUNDPROOF”. NEITHER THE DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATION OR WARRANTY AS TO THE LEVEL OF SOUND OR IMPACT NOISE TRANSMISSION BETWEEN AND AMONG UNITS. Subject to the restrictions contained in Article 4, each Owner hereby acknowledges that Noise Disturbances may disturb the Units and occupancy of the Units. To the fullest extent permitted by Colorado law, each Owner, by taking title to the Unit, forever waives and releases any claims such Owner and its successors and assigns may have against Declarant and its successors, assigns and affiliates, which in any way arise out of the Noise Disturbances.

Notwithstanding the foregoing, it is recognized that the build-out of the Units will impact sound transmission. Accordingly, it is expressly agreed that Units shall be built-out (including any remodeling or renovation) in accordance with the sound isolation recommendations of the consulting engineer of the Declarant GEILER & ASSOCIATES, LLC, including the May 20, 2014 Mechanical Noise Review and Recommendations and the May 27, 2014 Sound Isolation Review and Recommendations, copies of which are on file with the Declarant.

ARTICLE 16

ALTERNATIVE DISPUTE RESOLUTION

16.1 Procedures for Dispute Resolution. Other than with respect to claims relating to enforcement of this Declaration under Section 6.10 above, any and all (a) claims by an Owner or the Association against (i) Declarant or any Affiliate thereof, (ii) a Contractor, or (iii) a Design Consultant (individually, an “**Applicable Party**”); and (b) disputes between or among an Owner or the Association and one or more Applicable Parties, including any such claims or disputes arising out of or relating to the design or construction of any portion of the Condominium

(collectively, “**Disputes**”) shall be resolved in accordance with the procedures set forth in this Article 16. By accepting a deed to a Unit, each Owner agrees that the procedures for resolving Disputes set forth in this Article 16 shall be the exclusive procedures and shall provide the exclusive remedy for resolving Disputes and specifically waives any and all other rights or remedies such Owner may have against any Applicable Party at law, in equity or otherwise with respect to all Disputes.

16.2 Dispute Relating to Individual Units. For any Dispute that is unique to a single Unit, meaning that the circumstances of such Dispute are not shared by any other Owner or the Association with respect to another Unit or Common Element in the Condominium, the exclusive procedures and remedies for the Owner of such Unit to pursue such Dispute against the Applicable Parties shall be those procedures set forth in Section 16.04 below.

16.3 Dispute Relating to Common Elements or Multiple Units. For any Dispute regarding more than one Unit or any Common Element, (i) the Association shall have the exclusive right to pursue such Dispute on behalf of the Owners and to seek redress against the appropriate Applicable Parties; and (ii) individual Owners shall not be permitted to pursue such Dispute or seek redress against the appropriate Applicable Party on their own behalf or on the behalf of any other Person. In such event, the Association shall comply with the procedures set forth in Section 16.04 below. Notwithstanding the foregoing, the Association may not pursue any such Dispute unless, at a special meeting of the Owners held in accordance with the provisions of the Bylaws, more than 67% of all the votes in the Association are cast in favor of pursuing such Dispute. In the event that 67% of all of the votes in the Association do not vote in favor of so pursuing the Dispute, no Owner shall be entitled to pursue the Dispute or seek redress against any Applicable Party on such Owner's own behalf or on behalf of the Association or other Owners. By accepting a deed to a Unit, each Owner hereby irrevocably grants to the Association a power of attorney to pursue a Dispute in the manner set forth in this Article 16 and to settle such Dispute on the Owner's behalf without further consent or action by such Owner.

16.4 Procedure for Dispute Resolution. In the event that either the Association or an Owner (each, a “**Complaining Party**”) elects to pursue a Dispute as provided in Sections 16.01, 16.02 or 16.03 above, as applicable, then the following procedure shall be followed by such party.

(a) The Complaining Party shall first give the Applicable Parties written notice of the Dispute describing in reasonable detail the factual circumstances giving rise to the Dispute (the “**Dispute Notice**”). Within 60 days after receiving a Dispute Notice, those Applicable Parties and the Complaining Party shall meet to inspect, evaluate, investigate and discuss the facts and circumstances giving rise to the Dispute and shall attempt in good faith to resolve the Dispute. Notwithstanding the foregoing, if the Dispute concerns any matter subject to the provisions of the Construction Defect Action Reform Act, Section 13-20-801 *et seq.*, Colorado Revised Statutes, then in lieu of the other requirements of this Section 16.04(a), the Complaining Party shall comply with the notice of claim process described in Section 13-20-803.5 of the Colorado Revised Statutes and the Complaining Parties and the Applicable Parties shall proceed to attempt to resolve the Dispute as provided in Section 13-20-803.5 of the Colorado Revised Statutes.

(b) If the Applicable Parties and the Complaining Party are not able to resolve the Dispute following the applicable negotiation process described in Section 16.04(a) above, the Dispute shall be submitted to non-binding mediation. Such mediation shall be conducted by the Judicial Arbitrator Group (“JAG”) in Denver, Colorado, pursuant to the mediation standards established by JAG. Such mediation shall be governed by the laws of the State of Colorado. The parties shall select a mediator and shall conduct and complete the mediation within 45 days after the date JAG is first contacted by either party. Notwithstanding anything to the contrary set forth herein, the mediator shall not have the authority to impose a settlement on the parties.

(c) In the event that the Complaining Party and the Applicable Parties are not able to resolve the Dispute after the mediation proceedings described above, the parties shall submit to binding arbitration conducted by JAG in Denver, Colorado, pursuant to the provisions of the Colorado Arbitration Act, Colorado Revised Statutes Sections 13-22-201 *et seq.* The arbitration shall be governed by the laws of the State of Colorado. The arbitrator shall be a neutral and impartial third party and, if the Dispute concerns the design or construction of any portion of the Condominium, no such arbitrator selected shall have less than 6 years experience litigating or presiding over disputes based on or related to the design or construction of real property improvements. If the parties cannot agree on an arbitrator to conduct the arbitration, then the Complaining Party and Applicable Parties shall each select one arbitrator and such arbitrators shall then select a third arbitrator. The third arbitrator shall serve as the arbitrator for the arbitration. Judgment upon an award rendered by the arbitrator must be entered by a court having competent jurisdiction. The prevailing party in such arbitration proceeding shall be entitled to recover from the nonprevailing party all of its costs and expenses incurred in connection therewith, including the fees and disbursements of the arbitrator and any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party. All statements or admissions, whether oral or written, made in the course of the arbitration by any Person shall be deemed confidential and shall not be disclosed outside of the arbitration proceedings by any Person receiving such statements or admissions. The decision of the arbitrator shall be final and binding upon the Applicable Party, the Complaining Parties, the Association and all Owners.

16.5 Exclusiveness of Procedures. In the event that the provisions of Section 16.03 above shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the provisions of Section 16.02 above shall be deemed applicable for the resolution of all Disputes and such determination by the court of competent jurisdiction shall not be construed to vitiate the exclusiveness of this Article 16 as the sole procedure for resolving all Disputes against the Applicable Parties.

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

constitutional right to trial by jury for any Disputes against an Applicable Party and covenants and agrees that the waiver of jury trial described above shall be binding upon its successors and assigns and upon all Persons asserting rights or disputes or otherwise acting on such Owner's behalf.

16.7 Construction Defect Reform Act. Except as may be permitted under Applicable Law and as expressly provided above, nothing herein shall be interpreted to supersede the provisions of the Construction Defect Action Reform Act, Sections 13-20-801 *et seq.*, Colorado Revised Statutes.

16.8 No Amendment; Enforcement by Declarant. The terms and provisions of this Article 16 inure to the benefit of Declarant, are enforceable by Declarant, and shall not be amended without the written consent of Declarant (except as otherwise required by the Act). BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS ARTICLE 16 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 ARTICLE 16 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 ARTICLE 16 LIMIT HIS, HER OR ITS RIGHTS WITH RESPECT TO RIGHTS AND REMEDIES THAT MAY BE AVAILABLE.

ARTICLE 17 **GENERAL PROVISIONS**

17.1 The Act; Severability. The Condominium Project and this Declaration will not be subject to the provisions of any amendment to or replacement of the Act which becomes effective after the date of Recording of this Declaration, unless the provisions of the amendment or replacement are expressly made binding upon common interest communities existing at the time of such amendment. However, the Association may elect to subject the Condominium Project to any amendment or replacement by the affirmative vote of all Owners who would be required to approve an amendment to this Declaration pursuant to Section 13.1 concerning the subject matter contained in the amendment to or replacement of the Act. If any of the terms, conditions, provisions, sections or clauses of this Declaration conflict with any provision of the Act, the provisions of the Act control unless the Act permits this Declaration to override the Act, in which event this Declaration controls. The invalidity of any covenant, restriction, condition, limitation or provision of this Declaration or the application of any of them to any person or circumstance will not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any covenant, restriction, condition, limitation or provision to any other person or circumstances.

17.2 First Mortgage Protections.

(a) No provision of this Declaration shall limit, modify, amend, delay, condition or reduce the rights of any First Mortgagee under the documents evidencing its Mortgage or related to its Mortgage, or give any Owner or any other party priority over

any rights of the First Mortgagee in the case of a distribution to such Owner or other party of insurance proceeds or condemnation awards.

(b) Upon receipt by the Association of a written request for notices as described in the definition of “**Eligible Holder**” in Section 1.1, any Eligible Holder who provides such request will be entitled to timely written notice of:

(i) Any condemnation loss or casualty loss that affects a material portion of the Property or that affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(ii) Any 60-day delinquency in the payment of Assessments or charges owed by a Unit subject to the First Mortgage of such Eligible Holder;

(iii) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; or

(iv) Any proposed action that required the consent of a specified percentage of First Mortgagees.

17.3 Interpretation of Declaration. The provisions of this Declaration will be liberally construed to effect its purpose of creating a uniform plan for the ownership and operation of a first-class mixed-use condominium project. Whenever appropriate, singular terms may be read as plural, plural terms may be read as singular, and the neuter gender may be read as the feminine or masculine gender. The titles, headings and captions used throughout this Declaration are for convenience only and may not be used to construe this Declaration or any part of it.

17.4 Notices. Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted under this Declaration or the Bylaws to be given to any Owner, the Association, the Board or any Security Holder will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Unit; in the case of notices to the Association or the Board, the address of the Association’s registered agent; or in the case of notices to a Security Holder, its address most recently given to the Association by notice from the Security Holder. All notices are deemed given and received three business days after mailed as provided in the previous sentence. Any Owner or Security Holder may change its address for purposes of notice by notice to the Association in accordance with this Section 17.4. The Association or the Board may change its address for purposes of notice by notice to all Owners in accordance with this Section 17.4. Any such change of address is effective five days after the required notice is given.

17.5 Condemnation. If a Unit or Common Element or any part of either is acquired by eminent domain procedures, compensation for such taking shall be in accordance with the Act.

17.6 Partition. The Common Elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made separately from the Unit to which that interest

is allocated is void. Nothing in this Section 17.6 prevents the sale or encumbrance of all or a portion of the Common Elements in accordance with Section 14.2.

17.7 Taxation of Units. Upon Recording this Declaration, Declarant will deliver a copy of it to the assessor of the County of Pitkin in accordance with Section 38-33-105(2) of the Act. Each Unit, together with its Common Allocation of the Common Elements, constitutes a separate parcel for purposes of real estate assessment and taxation. The Common Elements will be assessed against each Unit in accordance with the Unit's Common Allocation and may not be separately assessed or taxed.

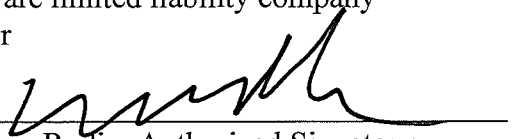
[signature page and exhibits follow]

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

DECLARANT:

Bleeker Mill Development LLC
a Delaware limited liability company

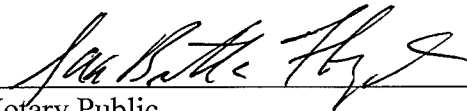
By: Rudin West I LLC
a Delaware limited liability company
Manager

By: 
William Rudin, Authorized Signatory

STATE OF NEW YORK)
) ss.
COUNTY OF *New York*)

The foregoing Condominium Declaration for the Mill Building Condominium was acknowledged before me this 28th day of April, 2016, by William Rudin as Authorized Signatory of Rudin West I LLC, a Delaware limited liability company as Manager of Bleeker Mill Development LLC, a Delaware limited liability company.

Witness my hand and official seal.


Notary Public

My commission expires: June 29, 2017


SARA BRITTA THORNQUIST
Notary Public, State of New York
No. 02TH6208300
Qualified in New York County
Commission Expires June 29, 2017

LENDER CONSENT

The undersigned ("**Lender**") is the beneficiary under the Construction Loan Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing recorded on May 8, 2014, at Reception No. 610187, in the office of the Clerk and Recorder of the County of Pitkin, Colorado, as amended and supplemented from time to time (the "**Deed of Trust**"). Lender, for itself and its successors and assigns, approves the foregoing Condominium Declaration for the Mill Building Condominium, including the Mill Building Condominium Map to be recorded herewith (collectively, the "**Declaration**"), affecting the property encumbered by the Deed of Trust, and agrees that no foreclosure or other enforcement of any remedy pursuant to the Deed of Trust shall impair, invalidate, supersede or otherwise affect the covenants, conditions, restrictions and easements established by the Declaration.

Lender hereby notifies the Association pursuant to the Declaration that the undersigned, as a First Mortgagee under the Declaration, requests that the Association provide the undersigned with all notices required to be sent to an Eligible Holder as defined in the Declaration. The undersigned's status as an Eligible Holder shall relate to all of the Units until the Deed of Trust is released as to such Units. All notices to the undersigned as an Eligible Holder shall be delivered to the address given for notices to the undersigned under the Deed of Trust.

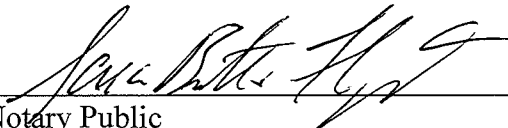
JPMORGAN CHASE BANK, N.A.

By: 
Name: JASON CONTE
Title: Authorized Officer

STATE OF NEW YORK)
) ss.
COUNTY OF New York)

The foregoing Lender Consent was acknowledged before me this 28th day of April, 2016, by Jason Conte as Authorized Officer of JPMorgan Chase Bank NA.

Witness my hand and official seal.


Notary Public

My commission expires: June 29, 2017

SARA BRITTA THORNQUIST
Notary Public, State of New York
No. 02TH6208300
Qualified in New York County
Commission Expires June 29, 2017

Exhibit A
Legal Description of the Property

Lots P, Q, R and S, Block 78, City and Townsite of Aspen.
County of Pitkin, State of Colorado.

Also described as:

A PARCEL OF LAND SITUATED IN SECTION 7, TOWNSHIP 10 SOUTH, RANGE 84 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF ASPEN, COUNTY OF PITKIN, STATE OF COLORADO, BEING LOTS P, Q, R & S, BLOCK 78, ASPEN TOWNSITE, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT S, THE POINT OF BEGINNING;
THENCE N75°09'11"W ALONG THE SOUTHERLY BOUNDARIES OF SAID LOTS A DISTANCE OF 120.62 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT P;
THENCE LEAVING SAID SOUTHERLY BOUNDARIES N14°50'49"E ALONG THE WESTERLY BOUNDARY OF SAID LOT P, A DISTANCE OF 100.00 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT P;
THENCE LEAVING SAID WESTERLY BOUNDARY S75°09'11"E ALONG THE NORTHERLY BOUNDARIES OF SAID LOTS A DISTANCE OF 120.62 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT S;
THENCE LEAVING SAID NORTHERLY BOUNDARIES S14°50'49"W ALONG THE EASTERLY BOUNDARY OF SAID LOT S A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

Exhibit B
Votes and Common Allocations for Each Unit

<u>Unit</u>	<u>Allocated Interests</u>
Unit 101	19.01%
Unit 201	3.38%
Unit 202	16.17%
Unit 301	3.32%
Storage 001	0.95%
Storage 102	2.51%
PH-A	16.49%
PH-B	15.37%
PH-C	9.76%
PH-D	9.78%
AHU 1A	0.46%
AHU 2A	0.93%
AHU 2B	0.93%
AHU 2C	<u>0.93%</u>
TOTAL	100.00%

Votes as to All Matters Voted on by Owners
(Including At-Large Director)

Unit 101	1,580
Unit 201	281
Unit 202	1,343
Unit 301	276
Storage 001	79
Storage 102	209
PH-A	1,370
PH-B	1,277
PH-C	811
PH-D	812
AHU 1A	412
AHU 2A	517
AHU 2B	515
AHU 2C	<u>518</u>
TOTAL	10,000

Exhibit B

Votes by Class of Ownership

Votes for Commercial Director

Unit 101	4,193
Unit 201	746
Unit 202	3,566
Unit 301	732
Storage 001	209
Storage 102	<u>554</u>
TOTAL	10,000

Votes for Two Residential Directors

PH-A	3,208
PH-B	2,991
PH-C	1,899
PH-D	<u>1,902</u>
TOTAL	10,000

Votes for One Residential Director

AHU 1A	2,099
AHU 2A	2,635
AHU 2B	2,624
AHU 2C	<u>2,641</u>
TOTAL	10,000

Exhibit C
Other Title Matters Affecting the Property

Reservations and Exceptions as set forth in the Deed from the City of Aspen, dated February 27, 1888 and recorded April 21, 1888 in Book 59 at Page 422 as Reception No. 23674 providing as follows: "That no title shall be hereby acquired to any mine of gold, silver, cinnabar or copper or to any valid mining claim or possession held under existing laws.

Terms, Conditions and Provisions of Termination Agreement of Common Interest Community (Jerome Professional Building Condominiums), dated April 29, 2014 and recorded May 8, 2014 as Reception No. 610186.

Terms, Conditions and Provisions of Resolution No. 26 Series 2006, dated August 15, 2006, Approving Three Growth Management Review Approvals, Commercial Design Review, Special Review and Recommending that City Council Grant Subdivision Approval for the Development of a Mixed-Use Building containing Three Affordable Housing Units, Six Free-Market Multi-Family Units, and Commercial Net Lease area known as the Jerome Professional Building and located at 201 North Mill Street, City of Aspen, Pitkin County, Colorado, recorded September 11, 2006 as Reception No. 528466.

Terms, Conditions and Provisions of Ordinance No. 25, Series of 2007, dated June 25, 2007, Approving with Conditions Subdivision Review and Vested Property Rights for the Jerome Professional Building Redevelopment and Subdivision located at 201 North Mill Street, City of Aspen, Pitkin County, Colorado, recorded April 28, 2008 as Reception No. 548626.

Terms, Conditions and Provisions of Ordinance No. 32, Series of 2013, dated August 12, 2013, Approving with Conditions Subdivision -Other Amendment, Growth Management Review-Substantial Amendment and Commercial Design Review Approval-Other Amendment for 201 North Mill Street, legally described as the Jerome Professional Building Condominium, City of Aspen, Pitkin County, Colorado, recorded September 5, 2013 as Reception No. 603228.

Soil Nail Easement and Crane Swing Agreement, dated February 7, 2014 and recorded February 7, 2014 as Reception No. 607851 and Amendment No. 1 to Soil Nail Easement and Crane Swing Agreement dated August 20, 2014 and recorded September 4, 2014 as Reception No. 613260.

Terms, Conditions, Provisions and Obligations set forth in the Amended and Restated Subdivision Agreement for the Mill Building, dated March 28, 2014 and recorded March 28, 2014 as Reception No. 608957.

Deed of Trust from Bleeker Mill Development LLC for the use of JP Morgan Chase Bank to secure \$16,000,000.00, recorded May 8, 2014 as Reception No. 610187 and Assignment of Rents recorded May 8, 2014 as Reception No. 610188.

Revocable Encroachment License dated May 6, 2016, and recorded May 6, 2016 as Reception Number 629177.

Storm and water Best Management Practices Operations and Maintenance Agreement dated April 18, 2016 and recorded May 6, 2016 as Reception No. 629156.