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**FIRST AMENDED AND RESTATED CONDOMINIUM DECLARATION FOR
DER BERGHOF CONDOMINIUMS**



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**AMENDED AND RESTATED CONDOMINIUM DECLARATION
FOR
DER BERGHOF CONDOMINIUMS**

This Condominium Declaration for Der Berghof Condominiums (“Declaration”) is made effective upon recording.

RECITALS

- A. The owners of the Der Berghof Condominiums recorded a Condominium Declaration for Der Berghof Condominiums in the real property records of Pitkin County, Colorado on January 23, 1974, in Book 287, Page 539 (hereinafter referred to as the “Original Declaration”).
- B. This Declaration does not alter the undivided interest of the Units and does not terminate the Condominium.
- C. The purposes of amendments in this Amended and Restated Declaration include, but are not limited to the following: to update the Original Declaration to comply with current state law; to clarify the allocation of maintenance responsibilities and insurance between the Association and the Owners; to delete declarant rights and responsibilities that are no longer applicable; to remove unreasonable use restrictions on the community, to update provisions so as to allow the Board of Directors to efficiently operate the Community and deal with Community concerns; to add provisions that provide tools for the Association to effectively solve problems and enforce the Declaration, Bylaws and Rules and Regulations and to facilitate conversion by the Association of Common Elements into new Units and/or Limited Common Elements.
- D. One of the goals of the Association is to preserve the value and desirability of the Condominium and the Units and to further the interests of the residents of the Condominium and Members of the Association;
- E. The Members of the Association wish to accomplish the goals recited above by the adopting this Declaration.

NOW, THEREFORE, the Original Declaration is replaced by the covenants, servitudes, easements and restrictions set forth below:

**ARTICLE 1
NAME**

The name of the condominium is Der Berghof Condominiums (hereinafter sometimes called the “Condominium,” as further defined herein).



ARTICLE 2
DEFINITIONS

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Colorado Revised Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws and the Articles of Incorporation shall be defined as follows:

Section 2.1 “Act” means the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.*, as such Act may be amended from time to time.

Section 2.2 “Articles” or “Articles of Incorporation” means the Articles of Incorporation of Der Berghof Association, filed with the Secretary of State of the State of Colorado.

Section 2.3 “Association” means the Der Berghof Association, a Colorado nonprofit corporation, its successors or assigns.

Section 2.4 “Board” or “Board of Directors” means the body responsible for management and operation of the Association.

Section 2.5 “Bylaws” mean the Bylaws of Der Berghof Condominiums, as they may be modified from time to time.

Section 2.6 “Common Areas” shall mean the grounds, walks, drives and parking areas.

Section 2.7 “Common Elements” mean those portions of the property subject to this Declaration, which are not included within the boundaries of a Unit, as more particularly described in this Declaration.

Section 2.8 “Common Expenses” mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Condominium including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements.

Section 2.9 “Community-Wide Standard” means the standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board of Directors.

Section 2.10 “Condominium” means all that property as more particularly described in Exhibit “A” attached hereto and incorporated herein by reference that is submitted to the provisions of the Act by this Declaration.

Section 2.11 “County” means Pitkin County, Colorado.

Section 2.12 “Electronic Record” means information created, transmitted, received or



stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmissions.

Section 2.13 General Common Element means all of the Common Elements other than the Limited Common Elements.

Section 2.14 Governing Documents mean this Declaration and all exhibits hereto, the Association's Bylaws, and the Condominium Map, all as may be supplemented or amended from time to time.

Section 2.15 Limited Common Elements mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one or more, but less than all, Units, as more particularly set forth in this Declaration.

Section 2.16 Majority means those eligible votes, Owners, or other group as the context may indicate totaling more that 50% of the total eligible number.

Section 2.17 Map means the Condominium Map of Der Berghof as recorded in the office of the Clerk and Recorder of Pitkin County, Colorado, and as it may be amended from time to time.

Section 2.18 Mortgage means any recorded mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

Section 2.19 Mortgage or Mortgage Holder means the holder of any Mortgage.

Section 2.20 Occupant means any Person staying overnight in a Unit regardless of whether such Person is a tenant or the Owner of such Unit.

Section 2.21 Owner shall mean the record titleholder of a Unit within the Condominium, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Unit shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Unit.

Section 2.22 Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

Section 2.23 Unit means that portion of the Condominium shown on the Map which is intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

ARTICLE 3
LOCATION, UNIT BOUNDARIES, COMMON



AND LIMITED COMMON ELEMENTS

Section 3.1 Location. The Condominium subject to this Declaration and the Act is located in Pitkin County, Colorado, as more particularly provided in Exhibit A to this Declaration. The Map relating to the Condominium is in the records of the Clerk and Recorder of Pitkin County, Colorado. The Map is incorporated herein by reference as fully as if the same was set forth in their entirety herein.

Section 3.2 Units and Boundaries. The Condominium is divided into 12 residential Units, Common Elements and Limited Common Elements and their appurtenant percentage of undivided interest in the Common Elements. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Governing Documents and any rules and regulations of the Association. Each Unit includes that part of the structure, which lies within the following boundaries:

3.2.1 Vertical Boundaries. The vertical boundaries of each Unit shall be the vertical planes formed by the unfinished interior surfaces of the perimeter or vertical walls.

3.2.2 Horizontal Boundaries. The horizontal boundaries of the Unit are the unfinished interior surfaces of the floors and ceilings.

3.2.3 Additional Information to Interpret Unit Boundaries. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, surface texture, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces are part of the Unit and all other portions of the floors, walls and ceilings are part of the Common Elements. Each Unit includes the spaces and improvements lying within the boundaries of the Unit, including windows, window frames, doors and door frames.

In interpreting deeds and the Map, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Map thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds which may be expressed in any deed or the Map, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the Map or in a deed and those of the Unit.

The ownership of each Unit shall include, and therefor shall pass with each Unit, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with votes and membership in the Association, an undivided interest in the funds and assets held by the Association, and the undivided interest in the Common Elements appurtenant to each Unit.

Section 3.3 Right to Combine or Divide Units. Each Owner shall have the right to combine two contiguous Units or to divide two Units which have previously been combined in accordance with the provisions of this Section 3.3. There may be no other division, or combination



of Units or relocation of boundaries between adjoining Condominium Units without the prior written consent of the Association and shall be done in accordance with the procedures set forth in the Act. All improvements proposed for any Unit resulting from a combination or division as provided in the preceding sentence shall comply with Article 7 hereof. All costs incurred in connection with the combination or division shall be borne by the Owner or Owners of the affected Units, including all costs incurred by the Association in connection therewith. In connection with any such combination or division, the Owners of the Units being so combined or divided shall have the right, with the prior written approval of the Board, to redesignate, as part of a Unit or as a Limited Common Element, any portion of the Common Elements or any walls, floors or other separations between the affected Residential Units, which may be necessary or appropriate to accomplish such combination or division. Any previously combined Units which are subsequently divided, shall be divided on the same boundaries that originally existed between such Units. If Units are combined, the allocated interests appurtenant to the combined Residential Unit shall be the sum of the allocated interests in the Units that were combined as set forth in Exhibit C, attached hereto. Any previously-combined Units which are later divided shall be reinstated to the allocated interests which they had prior to the combination. An amendment to the Declaration and Map implementing a combination or division under this Section shall be executed and filed in accordance with the Act.

Section 3.4 Additional Units or Additional Floor Area in Existing Units. The Association reserves the right to create one or more additional units in the airspace above the current structure or to permit the conversion of such airspace into floor area to be utilized as part of one or more existing Units. Construction of such new units or additional floor area will be accompanied by a certificate of completion, executed by an independent licensed or registered engineer, surveyor, or architect stating that all structural components comprising any units created or enlarged pursuant to this Section 3.4 are substantially completed as set forth in C.R.S. 38-33.3-201. The maximum number of Units which may exist in the Condominium is 15. However, neither the Association nor the Board shall be authorized to implement either of the alternatives listed in this Section 3.4 without further action by the Association as a whole.

Section 3.5 Common Elements. The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. Ownership of the Common Elements shall be owned by the Unit Owners as tenants-in-common, subject, however, to control by the Association, as set forth in this Declaration. The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the whole or any part. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners. The Association shall have the right to convert air space which constitutes a Common Element to one or more new Units or to convert such airspace into additional developed square footage within a Unit by amending this Declaration and the Map under the provisions of Section 3.4, above, Article 13, below, and other relevant sections of this Declaration and to convey ownership of the new Units or additional floor area to any Person.

The Common Elements include the structural components of the buildings, including but



not limited to: roofs, floors other than the interior surfaces thereof; foundations, pipes, chases, ducts, flues, chutes, conduits, wires, and other utility installations to the outlets; flues, chimneys, vents and ducts installed in connection with fireplaces or stoves; bearing walls, columns and girders to the interior surfaces thereof, regardless of location; the balconies, patios, entryways lying outside the perimeter walls, walkways; all installations of power, lights, gas, hot, arid cold water existing for common uses, and the air space above and surrounding the Condominium on the real property described in Exhibit A, attached hereto.

3.5.1 Parking Spaces. Each condominium unit shall always have the exclusive use of one parking space, as historically assigned to each such Unit. All parking privileges expire on the date that the owner’s interest in his condominium unit ends. The surface parking spaces located on the Real Estate (the “Parking Spaces” or “Spaces”) shall be Limited Common Elements and subject to policies and procedures established from time to time by the Association.

Section 3.6 Limited Common Elements. The Limited Common Elements means those parts of the Common Elements which are either limited to and reserved for the exclusive use of an Owner of a Unit or are limited to and reserved for the common use of more than one but fewer than all of the Unit Owners.

ARTICLE 4
ASSOCIATION MEMBERSHIP, ALLOCATION OF VOTES, AND
ALLOCATION OF LIABILITY FOR COMMON EXPENSES

Section 4.1 Membership. All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, are members of the Der Berghof Association, a Colorado nonprofit corporation. Membership is not intended to include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest shall not terminate the Owner’s membership. No Owner, whether one or more Persons, shall have more than one membership per Unit owned.

The Project is hereby divided into twelve (12) separate Condominium Units, each of which shall have an eight and one-third percent (8 1/3 %) undivided interest in the Common Elements appurtenant thereto, which undivided interest in the Common Elements has been computed for each unit as a percentage of the total number of Units. The Association shall have the right to reallocate ownership of the Common Interests, as well the votes in the Association and allocation of liability for common expenses, among the owners in a manner which is fair and equitable, in the event additional floor area is constructed in existing Units or if one or more Units are constructed and added to the Project, as permitted under Article 12, below.

Section 4.2 New Additions to Common Elements. The Association shall have the right to construct new improvements on the Common Elements. Ownership of any such additions to the Common Elements shall be apportioned among all Condominium Units in proportion to the respective undivided interest in the Common Elements appurtenant thereto, as shown on Exhibit C



attached hereto, and shall be governed by this Declaration. The common expenses of any such additions to the Common Elements shall be apportioned among the Units in the percentages or fractions identified in Exhibit C, attached hereto.

Section 4.3 Voting. The Owner or collective Owners of a Unit shall be entitled to one vote weighted in accordance with the Unit's percentage interest in the Common Elements. When more than one Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners determine among themselves, otherwise the Unit's vote shall be suspended if more than one Person seeks to exercise it.

Section 4.4 General Allocations. Except as provided below or elsewhere in the Governing Documents, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit.

ARTICLE 5
ASSESSMENTS.

Section 5.1 Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.

Section 5.2 Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments; (iii) specific special assessments against any particular Unit which are established pursuant to the terms of this Declaration.

Section 5.3 Lien for Unpaid Assessments. All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), and if the Board so elects, rents, in the maximum amount permitted by law, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. The Association shall have authority to record a notice of such lien in the Pitkin County, Colorado real property records evidencing the lien created under this Declaration. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. The lien provided for herein shall have the priority as set forth in the Act.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless otherwise provided by Board resolution, the annual assessments shall be paid in equal monthly installments due on the tenth (10) day of each calendar month. No Owner may



exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, non-use of the Common Elements, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

Section 5.4 Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

5.4.1 If the annual assessment, any part or installment thereof or any other fine, special assessment or charge is not paid in full within ten days of the due date, or such later date as may be provided by the Board:

5.04.1.1 a late charge in an amount determined by the Board and set forth in the Association's collection policy may be imposed without further notice or warning to the delinquent Owner;

5.04.1.2 interest at the rate of **Twelve Percent (12%)** per annum, together with all expenses, including attorney's fees, incurred together with such late charges as provided by the By-Laws or Rules and Regulations of the Association.

5.04.1.3 upon 30 days written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner shall thereby lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

5.4.2 If assessments, fines or other charges, or any part thereof, remain unpaid more than 30 days after the assessment payments first become delinquent:

5.04.2.1 the Owner's right to vote shall be automatically suspended until all amounts owed are paid in full;

5.04.2.2 the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, and Colorado law, including reasonable attorney's fees actually incurred;

5.04.2.3 additionally, or in the alternative, the Association may foreclose on its lien against the Unit.

Enforcement under this Section is not dependent upon or related to other restrictions and/or other actions.

5.4.3 If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorney's fees, costs and expenses, then to costs and attorney's fees not reduced to a judgment, then to interest, then to late charges, then to fines and other charges permitted under this Declaration, then to delinquent assessments and then to current assessments.

5.4.4 Foreclosure or attempted foreclosure by the Association of its lien shall not preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges or fees, or monthly or other installments thereof, that are not fully paid when due.

If a foreclosure action is filed to foreclose an assessment lien, and the Owner abandons or leaves vacant his or her Unit, the Board may take possession and rent the Unit or apply for the appointment of a receiver for the Unit without prior notice to the Owner. The rights of the Association shall be senior to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

5.4.5 The Association shall have the right and power to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same.

Section 5.5 Computation of Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Condominium during the coming year, including an annual reserve contribution for replacement of improvements that are the Association's responsibility. Based on the budget, the Board shall establish the annual assessment or installments for the coming year. The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is an estimate of Common Expenses on which the Board may base the annual assessments. Notice of the annual assessment and installments thereof shall be provided in writing to Owners at least 15 days prior to the due date.

Section 5.6 Special Assessments. In addition to the annual assessment provided for above, the Board may, at any time, and in addition to any other rights it may have, propose a special assessment against all Owners, payable over such period as the Association may determine. Notice in writing of the amount of such special assessment and the time for payment shall be given to the Owners and no payment shall be due less than 30 days after such notice is mailed to the Owner. Specific special assessments may be levied in accordance with the terms of Section 5.7, immediately below.

Section 5.7 Specific Special Assessments. Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments against Units pursuant to this Declaration and this Section as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to do so shall not be grounds for any action against the Association or the Board of

Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future.

5.7.1 Any Common Expenses benefitting less than all of the Units or significantly disproportionately benefitting all Units may be specifically specially assessed equitably among all of the Units that are benefitted according to the benefit received. Expenses incurred for the regular maintenance, repair or replacement of the Common Elements shall not be specifically specially assessed.

5.7.2 Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically specially assessed against such Unit or Units.

Section 5.8 Statement of Account. The Association shall furnish to an Owner or the Owner's designee or to a holder of a security interest or its designee a statement setting forth the amount of unpaid Assessments then levied against the Condominium Unit in which the Owner, designee or holder of a security interest has an interest. The Association shall deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested to the inquiring party within 14 calendar days after the registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in such statement, when signed by the Treasurer of the Association, or Manager, if any, shall be binding upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith. The Board may establish a reasonable fee relating to such statement.

Section 5.9 Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit; or (3) added to the Association's capital reserve account.

Section 5.10 Borrowing. The Association shall have the power to borrow money and assign future income, including the right to assign its right to receive Common Expense assessments, but only upon the affirmative vote of a majority of the Association vote that is present and exercised, in person or by proxy, at a duly constituted meeting called for that purpose, or by ballot in lieu of a meeting as provided for in the Bylaws.

ARTICLE 6 MAINTENANCE RESPONSIBILITY

Section 6.1 Maintenance By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made by the Owner to the Limited Common Elements assigned to the Unit, except any portion of a Unit which is expressly

made the maintenance obligation of the Association as set forth in Section 6.2 below. This maintenance responsibility shall include, but not be limited to the following:

6.1.1 the materials making up the finished surfaces of the walls, floors and ceilings, including, but not limited to plaster, dry-wall, paneling, wall paper, paint, wall and floor tile, carpet and flooring (but not including the sub-flooring).

6.1.2 all glass surfaces (including exterior cleaning);

6.1.3 windows, window frames (except for periodic painting, staining and/or cleaning of the exterior window frames), casings and locks (including caulking of windows) and screens;

6.1.4 all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting, staining and/or cleaning of the exterior surface of entry doors and door frames);

6.1.5 all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or outside the boundaries of the Unit (including all electricity, water, or sewer pipes, lines, ducts, conduits, or other apparatus serving only the Unit);

6.1.6 any fireplace (except for the chimney and flue) that serves only the Unit;

6.1.7 All communications, television, telephone, cable and electrical lines, receptacles and boxes serving only the Unit, whether located within or outside the boundaries of the Unit;

6.1.8 In addition, each Unit Owner shall have the responsibility:

6.01.8.1 To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit, including keeping the balcony or patio appurtenant to the Unit free and clear of snow, ice, and any accumulation of water or other debris.

6.01.8.2 To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units.

6.01.8.3 To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

If due to the act or neglect of an Owner, loss or damage is caused to any person or property, including the Common Elements, the Limited Common Elements and the Units, such Owner shall be liable and responsible for same, except to the extent such damage or loss is covered by the Association's insurance and the carrier waives subrogation rights against such Owner.



The amount of the loss or damage may be collected as a specific special assessment as provided in Section 5.7 of this Declaration.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Section 6.2 Maintenance By the Association. The Association shall maintain and keep in good repair as a Common Expense all Common Elements, including any Limited Common Elements, but excluding any improvements made to such Limited Common Elements. The Association shall have the right, but not the obligation, to assess Owners for maintenance to Limited Common Elements serving their Units. The Association maintenance responsibility shall also include the following: painting, cleaning or staining window frames, door frames and exterior doors; and maintaining chimneys and chimney flues.

The foregoing maintenance shall be performed consistent with applicable Community-Wide Standards.

If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board determines that the need for maintenance or repair of the Common Elements is caused through the willful or negligent act of any Owner, or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Unit, and such cost shall become the personal obligation of the Owner, a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder,



except for injuries or damages arising within a reasonable time after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 6.3 Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Condominium that is exposed to a regular source of moisture. Therefore, the Association and the Unit Owners agree to: (a) promptly investigate to determine the source of the problem and the extent of the condition upon the discovery of any water leaks; (b) repair any such leaks in their respective areas of maintenance responsibility in a good and workmanlike condition; (c) ensure that any building material which has absorbed water or moisture as a result of a water leak and has not been completely dried as part of the repair of the water or moisture damage is removed and replaced; and (d) clean any area where mold and/or mildew appears with industry-accepted product designed to inhibit the growth of mold and/or mildew.

Section 6.4 Inspection, Maintenance, Repair and Replacement of High-Risk Components. The Board may, from time to time, determine that certain portions of the Units required to be maintained by the Owners, or certain objects or appliances within the Unit, pose a particular risk of damage to other Units and/or the Common Elements if they are not properly inspected, maintained, repaired or replaced. Those items determined by the Board to pose such a particular risk are referred to herein as "High-Risk Components."

At the same time that it designates a High-Risk Component, or at a later time, the Board may require one or more of the following with regard to the High-Risk Component: (a) that it be inspected at specified intervals by a representative of the Association or by an inspector(s) designated by the Board; (b) that it be replaced or repaired at specified intervals, or with reference to manufacturers' warranties, whether or not the individual component is deteriorated or defective; (c) that it be replaced or repaired with items or components meeting particular standards or specifications established by the Board; (d) that when it is repaired or replaced, the installation include additional components or installments specified by the Board; (e) that it be replaced or repaired by contractors having particular licenses, training or professional certification or by contractors approved by the Board; and (f) if the replacement or repair is completed by an Owner, that it be inspected by a person designated by the Board.

The imposition of requirements by the Board in this provision shall not relieve an Owner of



his or her obligations regarding High-Risk Components, including, but not limited to, the obligation to perform and pay for all maintenance, repairs and replacement thereof. If any Owner fails or refuses to maintain, repair or replace a High-Risk Component in accordance with the requirements established by the Board hereunder, the Association may, in addition to all other rights and powers granted to it pursuant to the Governing Documents enter the Unit for the purpose of inspecting, repairing, maintaining, or replacing the High-Risk Component, as the case may be, and charge all costs of doing so back to the Owner as a specific special assessment.

Section 6.5 Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner’s failure or refusal and of the Association’s right to provide necessary maintenance, repair, or replacement at the Owner’s sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten days. If the Board determines that: (a) an emergency exists or (b) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner’s sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

Section 6.6 Mechanics Liens. No labor performed and/or materials furnished for use and incorporated into any Unit with the consent of or at the request of the Unit Owner or the Owner’s agent, contractor, or subcontractor shall be the basis for filing of a lien against the Unit of any other Unit Owner not expressly consenting to or representing the same, or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic’s lien against the Unit of any other Owner or against the Common Elements, or any portion thereof, for labor performed and/or materials furnished in work on the first Owner’s Unit. The Association may pay any sums necessary to eliminate any lien filed against Units or the Common Elements not benefitting from the labor and/or materials and all sums paid including all costs and reasonable attorneys’ fees shall be a specific assessment against the Owner or Owners for whom the labor and/or materials were furnished.

Section 6.7 Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Article. No decision or interpretation by the Board shall constitute a binding precedent with respect

to subsequent decisions or interpretations of the Board.

ARTICLE 7
ARCHITECTURAL CONTROLS

Section 7.1 Authority of Board. The Board shall have the authority to select and employ professional consultants to assist it in discharging the duties established in this Article 7, the cost of such consultants to be paid by the Owner of any Unit for which plans and specifications have been submitted for approval. The Owner of any such Unit shall be responsible for paying the full cost of each review, whether or not submitted plans and specifications are approved by the Board, and the Board may require payment of all such costs prior to approval of plans and specifications. The Board also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

Section 7.2 Architectural Standards. Except as otherwise provided herein or as allowed by superceding Colorado law, no Owner, Occupant. or any other person may, without first obtaining written approval of the Board:

7.2.1 make any encroachment onto the Common Elements;

7.2.2 make any exterior change, alteration, or construction to a Unit or Common Element; or

7.2.3 store any personal property erect, place or post any object, sign, clothesline, speaker, light, storm door or window, fountain, flag, personalized or customized exterior door mat, or any other thing on the exterior of the building, in any window (other than window treatments approved by the Board), or in or on any Limited Common Element.

Section 7.3 Alteration of Units and/or Common Elements. There shall be no relocation of boundaries between Units or subdivision of Units. However, Units may be combined as set forth in Section 3.3, above, and any Unit which has been combined with another Unit may be re-established as a separate Unit pursuant to Section 3.3. Subject to the other provisions of the Act and this Declaration, alterations to the interiors of Units are subject to the following restrictions:

7.3.1 Except as provided herein and in the Community-Wide Standards, no Owner or Occupant may make any alteration within a Unit which involves Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written Board approval.

7.3.2 Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining written Board approval. Such approval shall not be granted unless the Owner has presented to the Board a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the



structural integrity of the Unit and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications.

7.3.3 Except as provided herein, no Owner shall make any change to the Limited Common Elements appurtenant to his or her Unit or in the use of said Limited Common Elements without first receiving the prior written approval of the Board.

7.3.4 Notwithstanding Sections 7.3.1, 7.3.2 and 7.3.3, above, all Owners desiring to make any interior modification or alteration to a Unit which may affect the Common Elements or structure or load-bearing portions of a Unit must make application to the Board as described below in order for the Board to make the determination of whether its approval is required.

Section 7.4 Required Action by the Board. Applications for approval of any architectural modification falling within the descriptions provided in Sections 7.3.1, 7.3.2, 7.3.3 or 7.3.4, above, shall be in writing and shall provide such information as the Board may reasonably require. The Board shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations; provided no decision of the Board shall be arbitrary or capricious. The Association, acting through the Board, shall be entitled to stop any construction that does not conform to the approved plans.

The standard for approval of such improvements shall include, but not be limited to: (1) aesthetic consideration, (2) materials to be used, (3) compliance with Community-Wide Standards, this Declaration, or the design standards which may be adopted by the Board, if any, (4) harmony with the external design of the existing building, Units and structures, and the location in relation to surrounding structures and topography, and (5) any other matter deemed to be relevant or appropriate by the Board.

If the Board fails to approve or to disapprove such application within 45 days after the application and all information as the Board may reasonably require have been submitted, then the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within ten (10) days of receipt of the Owner's notice, the approval will not be required and this Section will be deemed complied with as to the items specifically identified in the application; provided, however, even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations of the Association or of any applicable zoning or other laws.

Section 7.5 Encroachments onto Common Elements. The Board may permit Unit Owners to make encroachments onto the Common Elements as it deems acceptable. Such permission or approval, if granted, shall be provided in writing to the Owner and recorded in the real property records of the County. If any Owner or Occupant makes any other exterior change, alteration, or construction upon the Common Elements or Limited Common Elements without permission or



approval as described in this Article, he or she does so at his or her sole risk and expense. The Board may require that such unapproved change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

Section 7.6 Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the Board. It is the responsibility of every Unit Owner to determine for himself or herself what architectural modifications have been made to his or her Unit by any predecessor-in-interest. In the discretion of the Board, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

Section 7.7 Limitation of Liability. Review and approval of any application pursuant to this Article may be made on any basis, including solely the basis of aesthetic considerations, and the Board of Directors shall not bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Association, the Board of Directors, nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction or modifications to any Unit, nor may any action be brought against the Association, the Board of Directors, or any member thereof, for any such injury, damage or loss.

Section 7.8 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors may adopt different architectural standards for different parts of the Condominium, based on such considerations as the Board may reasonably determine. The approval of the Board of Directors of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7.9 Commencement of Construction. All changes, modifications and improvements approved by the Board hereunder must be commenced within six months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked, unless the Board gives a written extension for commencing the work. All work approved by the Board hereunder shall be completed in its entirety within 90 days from the date of commencement, unless otherwise agreed in writing by the Board. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or



part of an approved change, modification, or improvement.

ARTICLE 8
USE RESTRICTIONS

Each Owner of a Unit shall be responsible for ensuring that the Owner’s family, guests, tenants and Occupants comply with all provisions of the Governing Documents and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner’s family, guests, tenants or Occupants, as a result of such person’s violation of the Governing Documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner’s family, guests, tenants or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt Community-Wide Standards and other rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

Section 8.1 Use of Units. Each Unit shall be used solely for residential purposes only.

Section 8.2 Leasing. The term “lease” as used herein shall include any agreement for the leasing or rental of a Condominium Unit and shall specifically include, without limitation, a month-to-month rental. The Owner of a Condominium Unit shall have the right to lease his Condominium Unit under the following conditions:

8.2.1 All leases shall be in writing and a copy of the lease delivered to the Board or the Association's managing agent prior to the effective date of the lease.

8.2.2 All leases shall provide that the terms of the lease and lessee's occupancy of the Condominium Unit shall be subject in all respects to the provisions of this Declaration, the Association’s Articles of Incorporation, Bylaws and rules and regulations, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be default under the lease. If the Association requests that the Owner evict the Owner’s tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association’s request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association’s request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Unit.

8.2.3 The Association shall have the authority to adopt rules and regulations regarding leasing.



Section 8.3 Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

Section 8.4 Use of Limited Common Elements. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit or Units to which such Limited Common Elements are assigned, and said Owners' Occupants, guests, family members and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be owned separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements. Use of the Limited Common Elements shall at all times be governed by this Declaration, the Community-Wide Standards and other rules and regulations promulgated from time to time by the Board and/or Association as a whole.

Section 8.5 Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Condominium, or any part thereof, that would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The Units in the Condominium are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, no noxious, destructive, offensive or unsanitary activity or other activity which constitutes a nuisance shall be carried on the Condominium, including within any Unit. No Owner or Occupant may use or allow the use of the Unit or any portion of the Condominium at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Condominium.

Section 8.6 Signs. Except as may be provided for herein or as may be required or permitted by state law or legal proceedings, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.



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Section 8.7 Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in the designated trash receptacles. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags. No Owner or Occupant shall sweep or throw or permit to be swept or thrown from a Unit or the doors or windows or balconies any dirt, garbage or other substances.

Section 8.8 Unightly or Unkempt Conditions. The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Common Elements. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

Section 8.9 Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited Common Elements; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

8.9.1 No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors.

8.9.2 No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.

8.9.3 DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed within a Unit or on the Limited Common Elements appurtenant to the Unit in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

8.9.4 The Association encourages that DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas be installed on the roof of the building in which the Unit is located, subject to prior approval of the Board and in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

If a Unit is transferred which includes a satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but

not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

Section 8.10 Grilling. Except as otherwise approved by the Board, no electric, gas, charcoal or wood burning grills are permitted to be used or stored on the Common Elements, including the Limited Common Elements.

Section 8.11 Stored Personal Property. Without prior written permission of the Board, no personal property shall be stored, kept, or allowed to remain for more than 24 hours upon any portion of the Common Elements, other than on a Limited Common Element which has specifically approved for such use by the Board,. If the Board determines that a violation exists, then, not less than two days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board or the agent of the Association may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three days after the property is removed.

Neither the Association nor any Director, officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

Section 8.12 Rules and Regulations. The Board of Directors may adopt, amend and repeal rules and regulations concerning and governing the Condominium in furtherance of the provisions of this Declaration and the general plan of development. The Board of Directors may also establish and enforce penalties for infractions of the rules, including, but not limited to fines and suspension of rights to use the recreational facilities.

ARTICLE 9 INSURANCE

Section 9.1 Association's Insurance. The Association shall obtain and maintain at all times, as a Common Expense, insurance as required herein. The Association's policy shall rebuild the Unit to the quality of the construction as originally built or as modified by subsequent modification as permitted in this Declaration. The Association's insurance policy may exclude improvements and betterments made by Owners subsequent to the original construction and may



exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering), if, in the sole and absolute discretion of the Board the cost of such insurance is excessive. If the Board elects to exclude such coverage from the Association's insurance policy, it shall immediately provide notice thereof to the Owners, who will be responsible for providing such insurance for the Units owned by each such Owner.

All insurance purchased by the Association pursuant to this Article shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Unit Owners, and all other persons entitled to occupy any Unit as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs. Each Owner shall have the right to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of this Declaration.

Section 9.2 Blanket Insurance. The Board of Directors shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Condominium. If "all risk" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, broad form covered causes of loss, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

9.2.1 each Unit Owner is an insured person under the policy with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association;

9.2.2 the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners and their respective household members;

9.2.3 no act or omission by any Unit Owner not under the control of the Association will void the policy or be a condition to recovery under the policy;



9.2.4 ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;

9.2.5 any "other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

9.2.6 the master policy may not be canceled, substantially modified, or subjected to non-renewal without at least 30 days prior notice in writing to the Board of Directors, except in case of nonpayment of premiums, in which case 10-day prior notice in writing shall be required;

9.2.7 the casualty insurance may not contain a "co-insurance" provision;

9.2.8 all insurance policies of the Association shall be primary if there is other insurance in the name of the Owner;

9.2.9 an agreed value endorsement and an inflation guard endorsement; and

9.2.10 steam boiler and machinery coverage endorsement with a minimum liability per accident equal to the insurable value of the building housing the boiler or machinery. In the alternative, the Association may purchase separate stand-alone boiler and machinery coverage.

Section 9.3 Required Insurance Companies. All policies of insurance shall be written with a company licensed to do business in the State of Colorado. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

9.3.1 Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors.

9.3.2 In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his or her Unit.

9.3.3 In addition to the insurance required above, the Board shall obtain as a Common Expense:

9.03.3.1 workers' compensation insurance if and to the extent necessary to meet the requirements of law;

9.03.3.2 public liability insurance in amounts no less than \$1,000,000.00, and officers' and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall



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contain a cross liability endorsement;

9.03.3.3 fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds in an amount consistent with the best business judgment of the Board of Directors; and

9.03.3.4 such other insurance as the Board of Directors may determine to be necessary or desirable.

9.3.4 Insurance carried by the Association as a Common Expense shall not be required to include: (I) any part of a Unit that is not depicted on the Map; or (ii) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

9.3.5 Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

9.3.6 Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance unless the loss is caused by the negligent or willful act or omission of the Association or another Owner, or the Owner's family members, co-habitants, guests or other invitees, in which case the negligent party or party who committed a willful act or omission shall be responsible for the deductible. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to the total cost of repair, subject to the above standard regarding negligence and willful conduct. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any, subject to the above standard regarding negligence and willful conduct. If any Owner or Owners fail to pay the deductible when required under this Section, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Article 5 of this Declaration.

9.3.7 Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Article 5 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any

delinquency shall be paid by the Association to the affected Unit Owner.

Section 9.4 Owners' Insurance. Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association; including, but not limited to paint, wallpaper, paneling, other wall covering, window covering, tile, carpet and floor covering if the Board elects not to acquire of such elements, as provided in Section 9.1, above. Each Unit Owner is also responsible for obtaining insurance covering his or her personal property and coverage for liability arising within the Unit. The Association shall have no liability for the failure of any Unit Owner to maintain required insurance. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association.

ARTICLE 10 REPAIR AND RECONSTRUCTION

Section 10.1 Repair and Reconstruction. In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless Unit Owners holding at least two-thirds of the total Association vote, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

10.1.1 Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

10.1.2 Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in Article 9 of this Declaration, the additional cost shall be a Common Expense. If, for any other reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall be considered a special specific assessment as provided in Section 5.7 of this Declaration. If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.



10.1.3 Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Map and specifications under which the Condominium was originally constructed or as reflected in a subsequent amendment of the Map, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original or revised Map and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

10.1.4 Encroachments. Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed or as revised in subsequent Map . Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

10.1.5 Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty shall constitute a construction fund, which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Article to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s). and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

ARTICLE 11
EASEMENTS

Section 11.1 Easements for Use and Enjoyment of the Common Elements and Common Areas. Every Unit Owner and Occupant shall have a right and non-exclusive easement of ingress and egress, use and enjoyment in and to the Common Elements and the Common Areas which shall be appurtenant to and shall pass with the title to his or her Unit, subject to the following provisions:

11.1.1 the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units;

11.1.2 the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Governing Documents, including without limitation, the maintenance responsibility of the Association.

11.1.3 the right of the Association to borrow money as set forth in Section 5.10



of this Declaration; provided, however, the lien and encumbrance of any such security interest given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Unit or Unit Owner. (Any provision in this Declaration or in any such security interest given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Unit or Unit Owner);

11.1.4 the right of the Association to grant easements, leases and licenses across the Common elements;

11.1.5 the right of the Association to dedicate or transfer all or any portion of the Common Elements subject to approval of Owners holding two-thirds of the total Association vote;

11.1.6 the right of the Association to change the use of portions of the Common Elements or to close portions of the Common Elements; and

11.1.7 the right of the Association to adopt reasonable rules and regulations regarding use of the Common Elements.

Any Unit Owner may delegate his or her right of use and enjoyment in and to the Common Elements, Common Areas and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Unit, if leased.

Section 11.2 Support. Every portion of a Unit and all Common Elements contributing to the support of an abutting Unit shall be burdened with a non-exclusive easement of support for the benefit of such abutting Unit.

Section 11.3 Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element or the Common Areas, a valid easement for the encroachment exists. The easement does not relieve a Unit Owner of liability in case of gross negligence or willful misconduct.

Section 11.4 Utilities. To the extent that any utility line, chase, pipe, wire, or conduit serving any Unit, Units or the Common Elements lies wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. At the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, the Board of Directors, on behalf of the Owner can relocate any portion of the air



conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation.

Section 11.5 Public in General. The easements and rights created in this Article do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the real property records of the County.

ARTICLE 12
AUTHORITY AND ENFORCEMENT

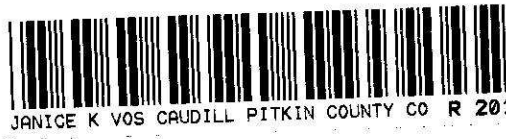
Section 12.1 General. The Condominium shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Governing Documents, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Unit. If any Occupant of a Unit violates the Declaration, Bylaws or rules and regulations, a fine may be imposed against the Owner and/or Occupant after notice to the alleged violator and an opportunity to be heard in accordance with the Association's covenant and rule enforcement procedure.

In any enforcement action taken by the Association under this Article, to the maximum extent permissible under the Act, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant as a Specific Special Assessment pursuant to Section 5.7 above.

Section 12.2 Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with any hearing procedure.

The Association or its duly authorized agent shall have the power to enter upon any portion of the Common Elements, including the Limited Common Elements, to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration,



the Bylaws or the rules and regulations. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this Section, all costs and fees actually incurred by the Association in connection with the violation, including, without limitation, reasonable attorney's fees and costs, shall be assessed against the violating Owner or Occupant as a Specific Special Assessment. The Association shall also have the authority to record in the Pitkin County real property records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Unit and or the Unit Owner.

Section 12.3 Failure to Enforce. The failure of the Association or the Board to enforce any provision of the Declaration, Bylaws or rules and regulations shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure of enforcement where: (I) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action at law or in equity and has failed to do so.

ARTICLE 13
AMENDMENTS.

Except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration and/or the Map may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Unit Owners holding at least two-thirds of the total Association vote.

Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Pitkin County, Colorado real property records.

ARTICLE 14
GENERAL PROVISIONS

Section 14.1 SECURITY. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND THE ASSOCIATION SHALL NOT HAVE A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTY THAT NON-UNIT OWNERS AND NON- OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE



CONDOMINIUM NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH UNIT OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

Section 14.2 Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than ten or more than 21 days from the date of receipt of the request.

Section 14.3 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 14.4 Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration or of the Bylaws, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

Section 14.5 Duration. The covenants and restrictions of this Declaration shall run with and bind the Condominium property perpetually unless otherwise terminated as provided herein.

Section 14.6 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

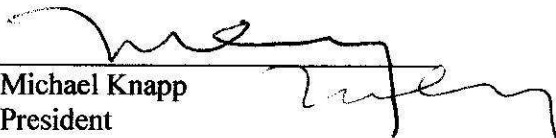
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IN WITNESS WHEREOF, the undersigned officers of Der Berghof hereby certify that this First Amended and Restated Declaration of Der Berghof Condominium was duly adopted by the Members of the Association.

Executed this 14th day of ~~August~~ November, 2006.

DER BERGHOF CONDOMINIUMS

By: 
Michael Knapp
President

STATE OF Michigan }
 } ss.
COUNTY OF Kent }

The foregoing instrument was acknowledged before me this 14th day of November, 2006, by Michael Knapp as President of the Der Berghoff Association.

Witness my hand and official seal.


Notary Public

My commission expires:

AMY M. DERRY
Notary Public, Kent County, MI
My Commission Expires 12/14/2011
Acting in Kent County



Exhibit A

Legal Description of Real Estate

Lots K, L, M and N, Block 69, City and Townsite of Aspen, County of Pitkin, State of Colorado

Exhibit B

Exceptions and Mineral Reservations as contained in Patent to Aspen Townsite recorded March 1, 1897 in Book 139 at Page 216 as Reception No. 60156.

Terms, conditions, obligations and restrictions, which do not contain a forfeiture or reverter clause, but omitting restrictions, if any, based on race, color, religion or national origin, as contained in Condominium Declaration for Der Berghof recorded May 23, 1974 in Book 287 at Page 539 as Reception No. 167661.

Terms, conditions, agreements, provisions and obligations as set forth in Grant of Exemption from Subdivision Regulations recorded May 24, 1974 in Book 287 at Page 602.

Easements, rights of way, and other matters as shown on the Plat of the Der Berghof Condominium recorded May 24, 1974 in Plat Book 4 at Page 467 as Reception No. 167887



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JANICE K VOS CAUDILL PITKIN COUNTY CO R 201.00 D 0.00

Exhibit C

Table of Allocated Interests

<u>Unit Number</u>	<u>Fraction of Common Elements and Common Expenses</u>	<u>Votes in the Association</u>
1	One - Twelfth	One
2	One - Twelfth	One
3	One - Twelfth	One
4	One - Twelfth	One
5	One - Twelfth	One
6	One - Twelfth	One
7	One - Twelfth	One
8	One - Twelfth	One
9	One - Twelfth	One
10	One - Twelfth	One
11	One - Twelfth	One
12	One - Twelfth	One

**CERTIFICATE OF THE DER BERGHOFF ASSOCIATION
RELATED TO AUTHORIZATION TO FILE
AMENDED AND RESTATED CONDOMINIUM DECLARATION**

I, Michael Knapp, certify that I am the President of the Der Berghoff Association ("the Association"), and do further certify as follows:

1. The Association is the association of unit owners of the Der Berghoff Condominiums ("the Project"), as described in the Condominium Map thereof recorded in the real property records of Pitkin County, Colorado in Plat Book 4 at Page 467, and as provided in the Condominium Declaration for Der Berghoff Condominiums recorded in the real property records of Pitkin County, Colorado on May 23, 1974, in Book 287, Page 539 (hereinafter referred to as the "Original Declaration").
2. At the annual meeting of the Association held on Saturday, September 2, 2006, the members of the Association elected to have the Association treated as if it were created after June 30, 1992, and thereby subject the Project to all of the provisions contained in the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101, *et seq.* (referred to herein as "CCIOA"). The vote in favor of the adoption of CCIOA exceeded sixty-seven percent (67%) of the votes that the persons present at the meeting in person or by proxy were entitled to cast.
3. Following the Association's election to adopt the CCIOA, the members of the Association considered the adoption of the First Amended and Restated Declaration for the Der Berghoff Condominiums (referred to herein as the "First Amended Declaration") in the form attached hereto. The members of the Association voted to adopt the First Amended Declaration by a vote in excess of sixty-seven percent (67%).
4. All of the holders of recorded first mortgage or deeds of trust against any Unit in the Project either consented or, pursuant to C.R.S. § 38-33.3-217(b), are deemed to have consented to the execution and recording of the First Amended Declaration. Notice of Proposed Adoption of the First Amended Declaration was published in The Aspen Times on September 15, 2006, and September 22, 2006.
5. The version of the First Amended Declaration attached hereto is identical to the version approved by the Members at the meeting held on September 2, 2006.

Executed and Acknowledged on the 14th day of November, 2006.

THE DER BERGHOFF ASSOCIATION



Michael Knapp
President



STATE OF Michigan }
COUNTY OF Kent } ss.

The foregoing instrument was acknowledged before me this 14 day of November, 2006, by Michael Knapp as President of the Der Berghoff Association.

Witness my hand and official seal

Amy M Derry
Notary Public

My commission expires:

AMY M. DERRY
Notary Public, MI
My Commission Expires 12/14/2011
Acting in Kent County

AMY M. DERRY
Notary Public, Kent County, MI
My Commission Expires 12/14/2011
Acting in Kent County