

orig → Mr. Eldridge to pick up 5/24

45725-000

**CORRECTED AND RESTATED**  
**DECLARATION OF**  
**ELK RUN AT COPPER MOUNTAIN CONDOMINIUMS**

This Declaration corrects, restates, amends, and replaces in its entirety that certain Declaration of Elk Run at Copper Mountain Condominiums recorded May 20, 1995, at Reception No. 515449. Elk Run Condominium Development, L.L.C., constitutes 100% of the Owners, and since there are at this time no First Mortgagees, this action is proper.

Name of the Common Interest Community:

Type of Common Interest Community:

Name of the Association:

Person Executing the Declaration:

**ELK RUN AT COPPER MOUNTAIN  
CONDOMINIUM**

**ELK RUN AT COPPER MOUNTAIN  
CONDOMINIUMS HOMEOWNERS  
ASSOCIATION, INC.**

**ROBIN ELDRIDGE**

TABLE OF CONTENTS

RECITALS ..... 1

**ARTICLE 1**

**DECLARATION AND SUBMISSION** ..... 1  
 Section 1.1 **Declaration** ..... 1

**ARTICLE 2**

**DEFINITIONS** ..... 1  
 Section 2.1 **“Agency”** ..... 1  
 Section 2.2 **“Allocated Interests”** ..... 2  
     2.2.1 **“Percentage Share of Common Elements and Common Expenses”** . . . 2  
     2.2.2 **“Voting”** ..... 2  
 Section 2.3 **“Articles”** ..... 2  
 Section 2.4 **“Annual Assessment”** ..... 2  
 Section 2.5 **“Assessments”** ..... 2  
 Section 2.6 **“Association”** ..... 2  
 Section 2.7 **“Association Documents”** ..... 2  
 Section 2.8 **“Bylaws”** ..... 2  
 Section 2.9 **“Clerk and Recorder”** ..... 2  
 Section 2.10 **“CMPACC”** ..... 2  
 Section 2.11 **“CMPOLA” or “POLA”** ..... 2  
 Section 2.12 **“Common Element”** ..... 3  
     2.12.1 **“General Common Elements”** ..... 3  
     2.12.2 **“Limited Common Elements”** ..... 3  
 Section 2.13 **“Common Expenses”** ..... 3  
 Section 2.14 **“Copper Mountain Resort Chamber” or “Resort Chamber”** ..... 3  
 Section 2.15 **“County”** ..... 3  
 Section 2.16 **“Declaration”** ..... 3  
 Section 2.17 **“Executive Board”** ..... 3  
 Section 2.18 **“First Mortgage”** ..... 3  
 Section 2.19 **“First Mortgagee”** ..... 3  
 Section 2.20 **“Manager”** ..... 4  
 Section 2.21 **“Map”** ..... 4  
 Section 2.22 **“Member”** ..... 4  
 Section 2.23 **“Mortgage”** ..... 4  
 Section 2.24 **“Mortgagee”** ..... 4  
 Section 2.25 **“Owner”** ..... 4  
 Section 2.26 **“Project”** ..... 4  
 Section 2.27 **“Unit”** ..... 4  
 Section 2.28 **“Successor Declarant”** ..... 4

Section 2.29	<u>“Supplemental Declaration”</u>	4
Section 2.30	<u>“Supplemental Map”</u>	4

**ARTICLE 3**

	<u>NAME, DIVISION INTO UNITS</u>	5
Section 3.1	<u>Name</u>	5
Section 3.2	<u>Association</u>	5
Section 3.3	<u>Number of Units</u>	5
Section 3.4	<u>Identification of Units</u>	5
Section 3.5	<u>Description of Units: Use</u>	5

**ARTICLE 4**

	<u>MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS</u>	6
Section 4.1	<u>The Association</u>	6
Section 4.2	<u>Transfer of Membership</u>	6
Section 4.3	<u>Membership</u>	6
Section 4.4	<u>Declarant Control</u>	6
Section 4.5	<u>Books and Records</u>	6
Section 4.6	<u>Manager</u>	6
Section 4.7	<u>Rights of Action</u>	7
Section 4.8	<u>Implied Rights and Obligations</u>	7
Section 4.9	<u>Notice</u>	7

**ARTICLE 5**

	<u>POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION</u>	7
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**ARTICLE 6**

	<u>MECHANIC’S LIENS</u>	9
Section 6.1	<u>No Liability</u>	9
Section 6.2	<u>Indemnification</u>	9
Section 6.3	<u>Association Action</u>	9

**ARTICLE 7**

	<u>EASEMENTS</u>	9
Section 7.1	<u>Recorded Easements</u>	9
Section 7.2	<u>Declarant’s Rights Incident to Construction</u>	10
Section 7.3	<u>Utility Easements</u>	10
Section 7.4	<u>Disclosure Regarding Utility Easements</u>	10
Section 7.5	<u>Reservation of Easements, Exceptions and Exclusions</u>	11

Section 7.6	<u>Emergency Access Easement</u>	11
Section 7.7	<u>Association as Attorney-in-Fact</u>	11

ARTICLE 8

<u>MAINTENANCE</u>		11
Section 8.1	<u>Maintenance by Owners</u>	11
Section 8.2	<u>Owner's Failure to Maintain or Repair</u>	12
Section 8.3	<u>Maintenance by Association</u>	12
Section 8.4	<u>Association Maintenance as Common Expense</u>	12
Section 8.5	<u>Easement for Maintenance</u>	13
Section 8.6	<u>Association's Right to Grant Owner's Maintenance Area</u>	13
Section 8.7	<u>Limited Common Element Damage</u>	13
Section 8.8	<u>Association Power</u>	13

ARTICLE 9

<u>INSURANCE</u>		13
Section 9.1	<u>General Insurance Provisions</u>	13
Section 9.2	<u>Certificates of Insurance: Cancellation</u>	15
Section 9.3	<u>Insurance Proceeds</u>	15
Section 9.4	<u>Insurer Obligation</u>	16
Section 9.5	<u>Repair and Replacement</u>	16
Section 9.6	<u>Common Expenses</u>	16
Section 9.7	<u>Fidelity Insurance</u>	17
Section 9.8	<u>Workers' Compensation Insurance</u>	17
Section 9.9	<u>Other Insurance</u>	17

ARTICLE 10

<u>ASSESSMENTS</u>		17
Section 10.1	<u>Obligation</u>	17
Section 10.2	<u>Budget</u>	17
Section 10.3	<u>Annual Assessments</u>	18
Section 10.4	<u>Apportionment of Annual Assessments</u>	18
Section 10.5	<u>Special Assessments</u>	18
Section 10.6	<u>Default Assessments</u>	19
Section 10.7	<u>Effect of Nonpayment: Assessment Lien</u>	19
Section 10.8	<u>Personal Obligation</u>	20
Section 10.9	<u>Payment by Mortgagee</u>	20
Section 10.10	<u>Statement of Status of Assessment Payment</u>	20
Section 10.11	<u>Capitalization of the Association</u>	20

**ARTICLE 11**

**DAMAGE OR DESTRUCTION** . . . . . 21  
Section 11.1 **The Role of the Executive Board** . . . . . 21  
Section 11.2 **Estimate of Damages or Destruction** . . . . . 21  
Section 11.3 **Repair and Reconstruction** . . . . . 21  
Section 11.4 **Funds for Repair and Reconstruction** . . . . . 22  
Section 11.5 **Disbursement of Funds for Repair and Reconstruction** . . . . . 22

**ARTICLE 12**

**CONDEMNATION** . . . . . 22  
Section 12.1 **Rights of Owners** . . . . . 22  
Section 12.2 **Partial Condemnation: Distribution of Award; Reconstruction** . . . . . 23  
Section 12.3 **Complete Condemnation** . . . . . 23

**ARTICLE 13**

**ASSOCIATION AS ATTORNEY-IN-FACT** . . . . . 23

**ARTICLE 14**

**RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS** . . . . . 24  
Section 14.1 **Reservation of Withdrawal Rights** . . . . . 24  
Section 14.2 **Other Reserved Rights** . . . . . 24  
Section 14.3 **Change in Allocated Interests** . . . . . 24  
Section 14.4 **Termination of Rights** . . . . . 24

**ARTICLE 15**

**DESIGN REVIEW** . . . . . 24

**ARTICLE 16**

**MORTGAGEE'S RIGHTS** . . . . . 25  
Section 16.1 **Distribution of Insurance or Condemnation Proceeds** . . . . . 25  
Section 16.2 **Right to Pay Taxes and Charges** . . . . . 25  
Section 16.3 **Audited Financial Statement** . . . . . 25  
Section 16.4 **Notice of Action** . . . . . 25  
Section 16.5 **Action by Mortgagee** . . . . . 26

**ARTICLE 17**

**DURATION OF COVENANTS AND AMENDMENT** . . . . . 26  
Section 17.1 **Term** . . . . . 26

Section 17.2 Amendment ..... 26  
Section 17.3 Revocation ..... 27

ARTICLE 18

LIMIT ON TIMESHARING ..... 28

ARTICLE 19

GENERAL PROVISIONS ..... 28  
Section 19.1 Restriction on Declarant Powers ..... 28  
Section 19.2 Enforcement ..... 28  
Section 19.3 Severability ..... 28  
Section 19.4 Conflicts Between Documents ..... 28

**DECLARATION OF  
ELK RUN AT COPPER MOUNTAIN CONDOMINIUMS**

THIS DECLARATION OF ELK RUN AT COPPER MOUNTAIN CONDOMINIUMS (the "Declaration") is made as of May \_\_\_\_, 1996, by Elk Run Condominium Development, L.L.C., a Michigan limited liability company (the "Declarant").

**RECITALS**

A. Declarant is owner of that certain real property located in the County of Summit, Colorado, more particularly described on the attached Exhibit A (the "Property").

B. Declarant desires to create a condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute § 38-33.3-101 et seq. (the "Act") on the Property, the name of which is Elk Run at Copper Mountain.

**ARTICLE 1**

**DECLARATION AND SUBMISSION**

Section 1.1 Declaration. Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

**ARTICLE 2**

**DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration shall have the following meanings:

Section 2.1 "Agency" means any agency or corporation such as Housing and Urban Development, Veteran's Administration, Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"), that purchases or insures residential mortgages.

Section 2.2 “Allocated Interests” means the undivided interest in the Assessments and votes in the Association allocated to each Unit as set forth in Exhibit B attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 “Percentage Share of Common Elements and Common Expenses”: The ratio which the number of bedrooms contained in a Unit bears to the total number of bedrooms contained in all Units.

2.2.2 “Voting”: One vote per Unit on all matters.

Section 2.3 “Articles” mean the Articles of Incorporation for Elk Run at Copper Mountain Condominiums, Inc. a Colorado nonprofit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.4 “Annual Assessment” means the Assessment levied pursuant to an annual budget.

Section 2.5 “Assessments” means the Annual, Special and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.6 “Association” means Elk Run at Copper Mountain Condominiums Homeowners Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 “Association Documents” means this Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

Section 2.9 “Clerk and Recorder” means the office of the Clerk and Recorder in the County of Summit, Colorado.

Section 2.10 “CMPACC” means the Copper Mountain Planning and Architectural Control Committee, as defined and described in the POLA (as that term is defined below) bylaws and other governing documents.

Section 2.11 “CMPOLA” or “POLA” means the Copper Mountain Property Owners and Lessees Association, a Colorado nonprofit corporation, having as members all owners (or lessees) of condominium units, townhome units, and Units in the Copper Mountain Resort area, or any successor organization which assumes the duties and responsibilities of POLA. Each Owner, by virtue of ownership of a Unit (as the terms “Owner” and “Unit” are defined below), becomes a member of POLA and agrees to be bound by its bylaws and other governing documents.

Section 2.12 “Common Element” means all portions of the Project except the Units. The Common Elements are owned by the Owners and consist of General Common Elements and Limited Common Elements.

2.12.1 “General Common Elements” means all tangible physical properties of this Project except Limited Common Elements and the Units.

2.12.2 “Limited Common Elements” means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map or by action of the Association, for the exclusive use of an Owner or are limited to and reserved for the common use of more than one but fewer than all Owners.

There shall be no alterations, additions, or removals of improvements on the Common Elements without the prior written approval of the Executive Board and the CMPACC.

Section 2.13 “Common Expenses” means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be Common Expenses by the Executive Board.

Section 2.14 “Copper Mountain Resort Chamber” or “Resort Chamber” means the Copper Mountain Resort Chamber, Inc., a Colorado nonprofit corporation, which shall undertake and sponsor a program to promote the Copper Mountain Resort area as a vacation and recreation area through the development of certain programs, which the members of the Resort Chamber shall determine to be beneficial. Each Owner, by virtue of acquiring title to a Unit, becomes a member of the Resort Chamber and agrees to pay such Owner’s pro rata share of all reasonable dues, assessments, and charges as may be approved by the members of the Resort Chamber in accordance with its bylaws.

Section 2.15 “County” means the County of Summit, Colorado.

Section 2.16 “Declaration” means this Declaration and the Map, and amendments and supplements to those documents.

Section 2.17 “Executive Board” means the governing body of the Association.

Section 2.18 “First Mortgage” means any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.19 “First Mortgagee” means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.20 "Manager" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.21 "Map" means the Condominium Map of the Project recorded with the Clerk and Recorder, depicting a plan and elevation schedule of all or a part of the Property subject to this Declaration and any supplements and amendments thereto.

Section 2.22 "Member" means every person or entity that holds membership in the Association.

Section 2.23 "Mortgage" means any mortgage, deed of trust or other document pledging any Unit or interest therein as security for payment of a debt or obligation.

Section 2.24 "Mortgagee" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.25 "Owner" means the owner of record, whether one or more persons or entities, of fee simple title to any Unit, and "Owner" also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.

Section 2.26 "Project" means the common interest community created by this Declaration and as shown on the Map, consisting of the Property, the Units and the Common Elements.

Section 2.27 "Unit" means one individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings as shown on the Map, together with the appurtenant interest in the Common Elements.

Section 2.28 "Successor Declarant" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by Declarant and recorded with the Clerk and Recorder.

Section 2.29 "Supplemental Declaration" means an instrument which amends this Declaration.

Section 2.30 "Supplemental Map" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

## ARTICLE 3

### NAME, DIVISION INTO UNITS

Section 3.1 Name. The name of the Project is Elk Run at Copper Mountain. The Project is a Condominium pursuant to the Act.

Section 3.2 Association. The name of the Association is Elk Run at Copper Mountain Condominiums Homeowners Association, Inc. Declarant has caused the Association to be incorporated as a nonprofit corporation under the laws of the State of Colorado.

Section 3.3 Number of Units. The maximum number of Units in the Project is thirty (30).

Section 3.4 Identification of Units. The identification number of each Unit is shown on the Map.

Section 3.5 Description of Units; Use.

3.5.1 Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as a Unit.

3.5.2 Any instrument affecting a Unit may describe it by its Unit number, ELK RUN AT COPPER MOUNTAIN CONDOMINIUMS, County of Summit, State of Colorado, according to the Map thereof recorded [provide recording information] in the records of the Clerk and Recorder of the County of Summit, Colorado, as amended from time to time.

3.5.3 Each Owner shall be entitled to the exclusive ownership and possession of such Owner's Unit. Each Unit shall be used and occupied solely for residential purposes.

3.5.4 An Owner shall have the right to lease such Owner's Unit upon such terms and conditions as the Owner may deem advisable; provided that any failure of a tenant to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease enforceable by the Association as a third-party beneficiary, whether or not the lease contains such a provision.

3.5.5 One Unit shall be designated on the Map as an employee housing unit. The Unit so designated may only be used as a residence for employees of businesses in the Copper Mountain Resort area.

## ARTICLE 4

### MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS

Section 4.1 The Association. Every Owner of a Unit shall be a Member of the Association automatically by virtue of such ownership. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

Section 4.2 Transfer of Membership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of such Owner's Unit and then only to the purchaser or Mortgagee of such Owner's Unit. The Association shall not create a right of first refusal on any Unit and Unit Owners may transfer ownership of their Units free from any such right.

Section 4.3 Membership. The Association shall have one (1) class of membership consisting of all Owners, including the Declarant so long as Declarant continues to own an interest in a Unit. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters as set forth in Section 2.2.2 above. Each Owner, including Declarant while Declarant owns any Unit, is entitled to and subject to all the rights and duties assigned to Owners under the Association Documents.

Section 4.4 Declarant Control. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act as set forth in Section 6.6 of the Association's Articles of Incorporation. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers are set out in the Articles and Bylaws of the Association. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

Section 4.5 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 4.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 4.7 Rights of Action. The Association on behalf of itself and any aggrieved Unit Owner shall be granted a right of action against any and all Unit Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. Individual Unit Owners shall have a right of action against the Association for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Unit Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents by the Act and by the Colorado Nonprofit Corporation Act.

Section 4.9 Notice. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Unit.

## ARTICLE 5

### POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Except as provided in the By-laws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

- 5.1.1 Adopt and amend bylaws and rules and regulations;
- 5.1.2 Adopt and amend budgets for revenues, expenditures and reserves;
- 5.1.3 Collect Assessments;
- 5.1.4 Hire and terminate managing agents and other employees, agents and independent contractors;

5.1.5 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Project;

5.1.6 Make contracts and incur liabilities;

5.1.7 Regulate the use, maintenance, repair, replacement and modification of Common Elements;

5.1.8 Cause additional improvements to be made as a part of the Common Elements;

5.1.9 Acquire, hold, encumber and convey in the name of the Association any right, title or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only if Members entitled to cast at least eighty percent (80%) of the votes agree to that action and if all Owners of Units to which any Limited Common Element is allocated agree in order to convey that Limited Common Element or subject it to a security interest;

5.1.10 Grant easements, leases, licenses and concessions through or over the Common Elements;

5.1.11 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;

5.1.12 Impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Association Documents;

5.1.13 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

5.1.14 Provide for the indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;

5.1.15 Assign its right to future income, including the right to receive Assessments;

5.1.16 Exercise any other powers conferred by the Declaration or Association Bylaws;

5.1.17 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and

5.1.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

## ARTICLE 6

### MECHANIC'S LIENS

Section 6.1 No Liability. If any Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no Owner of any other Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to such Owner's Unit.

Section 6.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements or against any other Owner's Unit or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at such Owner's own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 6.3 Association Action. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements. Any such lien shall be limited to the Common Elements and no lien may be effected against an individual Unit or Units.

## ARTICLE 7

### EASEMENTS

Section 7.1 Recorded Easements. The Property shall be subject to all easements as shown on any Map or Plat, those of record, those provided in the Act (including easements for encroachments set forth in Section 214 of the Act and an easement for maintenance of any such encroachments), and otherwise as set forth in this Article and on Exhibit C.

Section 7.2 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Elements, together with the right to store materials on the Common Elements, to build and maintain temporary walls, and to make such other use of the Common Elements as may be reasonably necessary or incident to any construction of the Units or improvements on the Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Project by the Owners.

Section 7.3 Utility Easements. There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of the Common Elements and the Units and the structures and improvements situated on the Property for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable tv and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property, subject to approval by the Association as to locations.

Section 7.4 Disclosure Regarding Utility Easements. Limited Common Elements of individual Units, such as decks, patios, or stairways from a Unit, may encroach on the utility easements discussed in Section 7.3 above upon the following terms and conditions:

7.4.1 Such encroachments into the utility easements shall be only by non-structural building elements and may not include habitable, enclosed structures. Additionally, the encroaching improvements may not extend beyond ten feet (10') from the permanent, habitable part of the Unit.

7.4.2 The beneficiaries of such utility easements shall have the right, for any purposes within the scope for which the easements were granted, to remove any structures which encroach and any related landscaping and shall not be obligated to replace or repair any structures so affected, but shall only be obligated to return the ground to the original grade elevations in accordance with the requirements of the easements.

7.4.3 The provisions of this Section 7.4 may not be amended to the detriment of the beneficiaries of the easements without the express written approval of such beneficiaries.

All repair, maintenance, or replacement of Limited Common Elements damaged or removed through exercise of the rights under the utility easements will be the sole responsibility of the Association and will be completed in accordance with the conditions listed above in this Section 7.4.

Section 7.5 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Unit over and across the General Common Elements and Limited Common Elements appurtenant to that Owner's Unit, which right shall be appurtenant to the Owner's Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements set forth in writing by the Association, such as for guest parking, storage and closure for repairs and maintenance.

Section 7.6 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 7.7 Association as Attorney-in-Fact. Each Owner, by such Owner's acceptance of a deed or other conveyance vesting in such Owner an interest in a Unit, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution in the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

## ARTICLE 8

### MAINTENANCE

Section 8.1 Maintenance by Owners. Each Owner shall maintain and keep in repair the interior of such Owner's Unit, including the fixtures thereof to the extent current repair shall be necessary in order to avoid damaging other Unit Owners, and the surfaces (excluding the roofing elements) of Limited Common Elements allocated to the Unit. All fixtures and equipment installed within the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner of such Unit. An Owner shall perform no act or work that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance of the interior non-supporting walls of such Owner's Unit, and the surface materials thereon such as plaster, drywall, paneling,

wallpaper, paint, tile and carpeting of the perimeter walls, ceilings and floors within the Unit, including Unit doors and windows. The Association reserves the right to assign storage compartments to Owners on terms and with restrictions determined by the Executive Board which are reasonable and non-discriminatory and further reserves the right to assign responsibility for interior maintenance of the storage compartments to Owners.

**Section 8.2 Owner's Failure to Maintain or Repair.** In the event that a Unit (including all allocated Limited Common Elements) is not properly maintained and repaired, and if the maintenance responsibility for the unmaintained portion of the Unit lies with the Owner of the Unit, or in the event that the Unit is damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of those portions of the damaged or destroyed Unit for which the Owner is responsible to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after notice to the Owner and with the approval of the Executive Board shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

**Section 8.3 Maintenance by Association.** The Association shall be responsible for the maintenance and repair of the Common Elements, whether located inside or outside of Units which (unless necessitated by damage caused by the negligence, misuse or tortious act of a Unit Owner or Owner's Agent as set forth in Section 8.4 below), shall be the Common Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any, located in the Common Elements. Snow removal shall be performed by Copper Mountain, Inc., pursuant to the PUD approved by Summit County. Snow storage shall be allowed only on areas designated in such PUD. The costs for such snow removal and storage shall be a part of the Common Expenses. In the event the Association does not maintain or repair the Common Elements, Declarant shall have the right, but not the obligation, to do so at the expense of the Association.

**Section 8.4 Association Maintenance as Common Expense.** The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Unit Owner according to the Allocated Interests therefor set forth on Exhibit B. Damage to the interior or any part of a Unit resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association shall also be Common Expense of all of the Owners. However, if such damage is caused by negligent or tortious acts of a Unit Owner, members of the Unit Owner's family, or the Unit Owner's agent, employee, invitee, licensee or tenants (collectively "Owner's Agents"), then such Unit Owner shall be responsible and liable for all of such damage and the cost thereof, to the extent that Owner's Agent's negligence caused such damage, which must be timely paid.

Section 8.5 Easement for Maintenance. Each Owner and the Association shall have the irrevocable right, to be exercised by the Manager, the Executive Board or officers or employees of the Association, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or at any hour for making emergency repairs, maintenance or inspection therein necessary to prevent damage to the Common Elements or another Unit. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost.

Section 8.6 Association's Right to Grant Owner's Maintenance Area. The Association reserves the right to grant the maintenance responsibility of certain areas on each Unit to the Unit Owner, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

Section 8.7 Limited Common Element Damage. In the event of damage or destruction of a Limited Common Element from any cause other than the negligence or tortious acts of an Owner or Owner's Agent, the then Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or rebuild the Limited Common Element to its previous condition. The Owner shall bear the cost of such damage to the extent of such Owner's or Owner's Agent's negligence.

Section 8.8 Association Power. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Unit or the Common Elements. No Owner shall make any addition or other alteration to any portion of the Common Elements without the express written consent of the Executive Board.

## ARTICLE 9

### INSURANCE

Section 9.1 General Insurance Provisions. The Association shall acquire and pay for, out of the assessments levied under Article 10 below, the following insurance policies carried with reputable insurance companies authorized to do business in Colorado:

9.1.1 Hazard Insurance Coverage. Insurance for fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount, special condominium, building ordinance and inflation guard endorsements attached, in amounts determined by the Executive Board to represent not less than the full then current insurable replacement cost of the buildings located on the Property including all of the Units and Common Elements, including all fixtures, interior and perimeter walls and floors, partitions, decorated and finished surfaces of

interior and perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the Units and including any fixtures, equipment or other property within the Units which are to be financed by a Mortgage to be purchased by an Agency including FNMA or FHLMC, and excluding any betterments and improvements made by Unit Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be the lesser of \$10,000 or 1% of the policy face amount. In the event the Project has central heating or cooling or contains a steam boiler, coverage for loss or damage resulting from steam boiler and machinery equipment accidents in an amount equal to the lesser of \$2,000,000 or the insurable value of the buildings housing the boiler or machinery shall also be obtained. Each Unit Owner shall notify the Association in writing of any additions, alterations or improvements to such Owner's Unit which increase the replacement value of such Owner's Unit and the Association shall use reasonable effort to obtain insurance on any such additions, alterations or improvements if such Owner requests it to do so and if such Owner shall make arrangements satisfactory to the Association to reimburse it for any additional premiums attributable thereto. In the event of the failure of an Owner to so notify the Association, or in the event additional coverage cannot be obtained by the Association after reasonable effort and a request of the Owner to obtain such additional coverage, or in the event that satisfactory arrangement is not made for the payment of additional premiums by the Unit Owner, the Unit Owner shall be responsible for any deficiency in any resulting insurance loss recovery and the Association shall not be obligated to apply any insurance proceeds to restore the affected Unit to a condition better than the condition existing prior to the making of such additions, alterations or improvements. Any additional premiums attributable to a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 10.7 hereof in the event the Association pays such premium for a Unit Owner.

Such hazard insurance policy must be written by an insurance carrier that has (a) a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, or (b) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition.

9.1.2 Comprehensive Liability. Comprehensive general public liability and property damage insurance for the Project in such amounts as the Executive Board deems desirable, provided that such coverage shall be for at least \$1,000,000 for bodily injury, including deaths and property damage arising out of a single occurrence insuring the Association, the Executive Board, the Manager or managing agent, or both, if any, and their respective agents and employees, and the Unit Owners from liability in connection with the operation, maintenance and use of Common Elements and must include a "severability of interest" clause or specific endorsement. Such coverage shall also include legal liability arising out of lawsuits related to employment contracts of the Association and such other risks

as are customarily covered with respect to condominiums similar to the Project in the Denver metropolitan area including automobile liability insurance if appropriate.

The insurance policies may be carried in blanket policy form naming the Association as the insured, for the use and benefit of and as attorney-in-fact for the Unit Owners. Each Unit Owner shall be 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. Each Mortgagee and its successors or assigns shall be a beneficiary of the policy in the percentages of Common Expenses for the Unit which the Mortgage encumbers. The insurance company shall waive its rights of subrogation under the insurance policy against any Unit Owner or member of the Unit Owner's household. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, shall void the insurance policy or be a condition to recovery under the insurance policy. If, at the time of a loss under an insurance policy described above there is other insurance in the name of the Unit Owner covering the same risk covered by the policy, the Association's policy shall provide primary insurance.

Insurance coverage on the furnishings and other items of personal property belonging to an Owner (unless financed by a Mortgage to be purchased by FNMA or FHLMC), casualty and public liability insurance coverage for each Unit and the Limited Common Elements associated therewith and workman's compensation insurance covering work within each Unit or on the Limited Common Elements associated therewith shall be the responsibility of the Owner of the Unit.

**Section 9.2 Certificates of Insurance: Cancellation.** Certificates of insurance shall be issued to each Owner and Mortgagee upon request. All policies required to be carried under this Article 9 shall provide a standard non-contributory mortgagee clause in favor of each First Mortgagee of a Unit and shall provide that such policy cannot be canceled by the insurance company without at least thirty (30) days' prior written notice to each Owner and each First Mortgagee whose address is shown in the records maintained pursuant to the Association's documents. If the insurance described in this Article 9 is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and to all First Mortgagees.

**Section 9.3 Insurance Proceeds.** Any loss covered by the property insurance policy described in Section 9.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 9.5 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

**Section 9.4 Insurer Obligation.** An insurer that has issued an insurance policy for the insurance described in Section 9.1 and 9.7 and shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses, and to any servicer of a Mortgage for FNMA.

**Section 9.5 Repair and Replacement.** Any portion of the Common Elements for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

9.5.1 The common interest community created by this Declaration is terminated in which case the approval must first be obtained of 51% of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units);

9.5.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

9.5.3 There is a vote not to rebuild by (a) eighty percent (80%) of the Owners entitled to vote and 51% of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units); and (b) every Owner and First Mortgagee of a Unit or assigned Limited Common Element that will not be rebuilt; or

9.5.4 Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Elements rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement of Common Elements in excess of insurance proceeds and reserves is a Common Expense. If all the Common Elements are not repaired or replaced, the insurance proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear in proportion to each Unit's Common Expenses Allocated Interests.

**Section 9.6 Common Expenses.** Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses provided, however, that if the Association's fire and extended coverage insurance covers fixtures, equipment or other property within some but not all of the Units (as required by any Agency including FNMA or FHLMC), the Association reserves the right to charge the Owner of such Units for which the Association provides additional insurance coverage, an amount equal to the premium attributable to such additional insurance coverage.

Section 9.7 Fidelity Insurance. Fidelity insurance or fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees and employees and on the part of all others including any manager hired by the Association, who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than the greater of (a) fifty thousand dollars (\$50,000), or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or management agent as the case may be, at any given time during the term of each policy or bond as calculated from the current budget of the Association but in no event less than a sum equal to three (3) months' aggregate assessments plus reserve funds. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.8 Workers' Compensation Insurance. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 9.9 Other Insurance. The Association shall maintain flood insurance if any part of the Project is located within a Special Flood Hazard Area on a Flood Insurance Rate Map, equal to the lesser of 100% of the insurable value of the Project or the maximum coverage available under the appropriate National Flood Insurance Program. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association's responsibilities and duties or as requested by any Agency.

## ARTICLE 10

### ASSESSMENTS

Section 10.1 Obligation. Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments.

Section 10.2 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject

the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.3 Annual Assessments. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 10.2 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, routine repairs, replacements and renovations within and of the Common Elements, wages, common water and utility charges for the Common Elements, legal and accounting fees, management fees (provided that any Unit designated as an employee housing unit shall not be charged management fees), expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable in quarterly installments on a prorated basis in advance and shall be due on the first day of each January, April, July, and October of each year. At the option of the Executive Board, Annual Assessments may be due and payable monthly in advance on the first day of every month. Assessment payments shall be prorated if the ownership of a Unit commences on a day other than a day when installments are due. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

Section 10.4 Apportionment of Annual Assessments. The Common Expenses shall be allocated among the Units on the basis of the Allocated Interests for Common Expenses in effect on the date of assessment, provided, however, that the Association reserves the right to allocate all expenses relating to fewer than all of the Units (such as those expenses attributable to Limited Common Elements and insurance premiums described in Section 9.6) to the Owners of those affected Units only.

Section 10.5 Special Assessments. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements or for any other expense incurred or to be incurred as provided in

this Declaration. This Section 10.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses, subject to the right of the Association to assess only against the Owners of affected Units any extraordinary maintenance, repair or restoration work on fewer than all of the Units shall be borne by the Owners of those affected Units only, and any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants or invitees) shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 10.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 10.7 Effect of Nonpayment: Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at a yearly rate not to exceed six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Executive Board may establish from time to time;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Elements during any period of delinquency;
- (v) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (vi) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vii) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Unit shall constitute a lien on such Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**Section 10.8 Personal Obligation.** Each Assessment against a Unit is the personal obligation of the person who owned the Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner will be exempt from liability for the Assessment by abandonment of such Owner's Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

**Section 10.9 Payment by Mortgagee.** Any Mortgagee holding a lien on a Unit may pay any unpaid Assessment payable with respect to such Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Unit for the amounts paid with the same priority as the lien of the Mortgage.

**Section 10.10 Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after receipt of the request, the Association shall have no right to assert a lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

**Section 10.11 Capitalization of the Association.** The Declarant shall establish an initial working capital fund equal to two-twelfths (2/12) of the estimated Annual Assessments for Common Expenses for each Unit, which amount shall be reimbursed to the Declarant upon the transfer of title to a Unit when that Unit's Owner makes the working capital contribution set forth in this section. The initial capital account shall be established upon the conveyance of the first Unit by Declarant and Annual Assessments shall commence upon the conveyance of the first Unit by Declarant. Upon acquisition of record title to a Unit from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to two twelfths (2/12) of the Annual Assessment determined by the Executive Board for that Unit for the year in which the Owner acquired title. Such payments shall not be

considered advance payments of Annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner including Declarant upon the sale of his Unit, provided that the new purchaser of the Unit has deposited the required working capital deposit with the Association. The working capital fund must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any of its expenses, reserve contributions, or construction costs, nor to make up any budget deficits during the period of Declarant control.

Section 10.12 Maintenance Accounts: Accounting. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

## ARTICLE 11

### DAMAGE OR DESTRUCTION

Section 11.1 The Role of the Executive Board. Except as provided in Section 9.5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 11.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction unless the approval is first obtained of 51% of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by votes allocated to such Units). Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 11.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or

appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.5, if permitted under the Act, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement or reconstruction.

Section 11.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in proportion to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

## ARTICLE 12

### CONDEMNATION

Section 12.1 Rights of Owners. Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2 Partial Condemnation: Distribution of Award: Reconstruction. The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Owners who represent at least sixty-seven percent (67%) of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such improvements are to be repaired or restored, the provisions in Article 11 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Units according to the relative value of each Unit which shall be based on the square footage of the Unit and in accordance with each Unit's Allocated Interests of Percentage Share of Common Elements, first to the Mortgagees and then to the Owners, as their interests appear.

Section 12.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that the approval is first obtained of 51% of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in Section 11.5 above.

## ARTICLE 13

### ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 9, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 11, or a complete or partial taking as provided in Article 12, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

## ARTICLE 14

### RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 14.1 Reservation of Withdrawal Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Units and/or Common Elements, provided however that none of the real estate may be withdrawn after any Unit has been conveyed by Declarant to a purchaser.

Section 14.2 Other Reserved Rights. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time with the approval of CMPACC to: (a) maintain and relocate sales offices, management offices, signs (in compliance with applicable sign codes) advertising the Project and models, of any size, within one or more Units and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, three (3) years from the recording of this Declaration with the Clerk and Recorder, and (b) appoint or remove any officer of the Association or any Executive Board member during the period of Declarant control as set forth in Section 4.4 above.

Section 14.3 Change in Allocated Interests. In the event Declarant or Successor Declarant exercises the right to withdraw Units as set forth above, the Allocated Interests of the resulting Units after such expansion or withdrawal shall be according to the formula set forth in Section 2.2 above.

Section 14.4 Termination of Rights. The rights reserved to the Declarant for itself, its successors and assigns in this Article shall expire, unless sooner terminated as required by the Act, three (3) years from the date of recording this Declaration, unless such rights are (i) extended as allowed by law, or (ii) reinstated or extended by the Association, subject to whatever terms, conditions and limitations the Executive Board may impose on the subsequent exercise of the rights by Declarant.

## ARTICLE 15

### DESIGN REVIEW

No alteration or additions to the Common Elements shall be made unless first approved in writing by the Executive Board and the CMPACC. The Executive Board shall exercise reasonable judgment to the end that all modifications to the Common Elements conform to and harmonize with existing surroundings and structures. The Executive Board has the absolute right to deny any requested changes which the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures.

## ARTICLE 16

### MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 16.1 Distribution of Insurance or Condemnation Proceeds. In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Unit.

Section 16.2 Right to Pay Taxes and Charges. Mortgagees who hold First Mortgages against Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 16.3 Audited Financial Statement. Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee.

Section 16.4 Notice of Action. Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Unit number), will be entitled to timely written notice of:

16.4.1 Any proposed amendment of the Association Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Unit or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Unit, or (d) the purposes to which any Unit or the Common Elements are restricted or any amendment set forth in Section 17.2 below;

16.4.2 Any proposed termination of the common interest community;

16.4.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by such Agency;

16.4.4 Any delinquency in the payment of Assessments owed by a Unit Owner subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;

16.4.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 9.

Section 16.5 Action by Mortgagee. If this Declaration or any Association Documents require the approval of Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE 17

### DURATION OF COVENANTS AND AMENDMENT

164  
Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 17.2 Amendment. Except as provided in Section 7.4, this Declaration, or any provision of it, may be amended at any time by Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose, and, provided the First Mortgagee has requested notice in accordance with Section 16.5 above, the approval shall first be obtained of 51% of First Mortgagees of Units subject to a First Mortgage (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add any material provisions which establish, provide for, govern or regulate any of the following:

17.2.1 Voting;

17.2.2 Assessments, Assessment liens or subordination of such liens;

17.2.3 Reserves for maintenance or repair and replacement of the Common Elements;

17.2.4 Insurance or fidelity bonds;

17.2.5 Reallocation of interests in the Common Elements, or rights to use of the Common Elements;

17.2.6 Responsibility for maintenance and repair of the Project;

17.2.7 Expansion or contraction of the common interest community, or the addition, annexation or withdrawal of property to or from the common interest community;

17.2.8 Boundaries of any Unit;

17.2.9 The interests in the Common Elements;

17.2.10 Convertibility of Units into Common Elements or of Common Elements into Units;

17.2.11 Imposition of any restrictions on the leasing of Units;

17.2.12 Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;

17.2.13 Establishment of self-management by the Association where professional management has been required by any Agency;

17.2.14 Any provision which is for the express benefit of any Agency or Mortgagee, regardless of whether the amendment is material;

17.2.15 Hazard or fidelity insurance requirements; and

17.2.16 Restoration or repair of the common interest community (after damage or partial condemnation) other than as specified herein.

Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act.

Section 17.3 **Revocation.** This Declaration shall not be revoked nor shall the condominium regime created hereby be terminated (except as provided in Article 11 regarding total destruction and Article 12 regarding total condemnation), without (a) the consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder and (b) the consent of 67% of First Mortgagees of Units subject to First Mortgages (which percentage is measured by votes allocated to such Units).

**ARTICLE 18**

**LIMIT ON TIMESHARING**

No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

**ARTICLE 19**

**GENERAL PROVISIONS**

Section 19.1 **Restriction on Declarant Powers.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 19.2 **Enforcement.** Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 19.3 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 19.4 **Conflicts Between Documents.** In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

DECLARANT:

ELK RUN CONDOMINIUM DEVELOPMENT,  
L.L.C, a Michigan limited liability company

By: \_\_\_\_\_  
Title: \_\_\_\_\_

