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**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS**  
**AND EASEMENTS**  
**FOR HOMESTEAD CONDOMINIUMS,**  
**A RESIDENTIAL CONDOMINIUM**  
**COMMON INTEREST COMMUNITY**

**JULY 24, 2006**

  
**HOMESTEAD**

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR HOMESTEAD CONDOMINIUMS,  
A RESIDENTIAL CONDOMINIUM COMMON INTEREST COMMUNITY**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HOMESTEAD CONDOMINIUMS ("Declaration") is made on the date hereinafter set forth by Landmark III LLC, a Colorado limited liability company, with an address of 4627 W. 20<sup>th</sup> Street Road, Suite A, Greeley, Colorado 80634 ("Declarant").

**RECITALS**

- A. Declarant is the owner of that certain real property located in the County of Weld, State of Colorado, more particularly described on Exhibit A attached hereto (the "Property").
- B. Declarant is the Owner of that certain real property located in the County of Weld, State of Colorado, more particularly described on Exhibit B attached hereto (the "Expansion Property").
- C. Declarant desires to create a residential condominium common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in CRS §§ 38- 33.3-101 *et. seq.* (the "Act") on the Property, the name of which is HOMESTEAD.

**ARTICLE I - DECLARATION AND SUBMISSION**

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, 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 II - DEFINITIONS**

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

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

2.2 "**Allocated Interest**" means the undivided interest in the Assessments and votes in the Association allocated to each Unit as set forth in Exhibit C attached hereto. The formulas for the Allocated Interests are as follows:

2.2.1 *Percentage Share of Common Expenses and Percentage Share of Ownership of Common Elements*: The figure is determined by the percentage equivalent to a fraction, the numerator of which shall be one (1), and the denominator of which shall be the total number of Units completed and existing at the applicable time. For purposes herein, "**completed and existing**" shall mean any Unit for which a certificate of occupancy has been obtained and the Unit is otherwise ready for its intended use and occupancy.

2.2.2 *Voting*. There shall be one (1) vote per Unit.

2.3 "**Articles**" means the Articles of Incorporation for Homestead Condominiums Owners Association, a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

2.4 "**Annual Assessment**" means the Assessment levied pursuant to an annual budget.

2.5 "**Assessments**" means the Annual, Special and Default Assessments levied pursuant to Article X below. Assessments are also referred to as a "**Common Expense Liability**" as defined under the Act.

2.6 "**Association**" means Homestead Condominiums Owners Association, a Colorado nonprofit corporation, its successors and assigns.

2.7 "**Association Documents**" means this Declaration, the Articles of Incorporation, the Bylaws, the Map, the Design Guidelines, and any procedures, rules, regulations or policies adopted under such documents by the Association. All provisions of the Association Documents shall be given the same force and effect as if set forth in the Declaration.

2.8 "**Bylaws**" means the Bylaws adopted by the Association, as amended from time to time.

2.9 "**Clerk and Recorder**" means the office of the Clerk and Recorder in the County of Weld, State of Colorado.

2.10 "**Common Element**" means all portions of the Project except the Units. The Common Elements are owned by the Owners in undivided interests according to their Allocated Interests set forth in Section 2.2.1 above and consist of General Common Elements and Limited Common Elements.

2.10.1 "**General Common Elements**" means all tangible physical properties of this Project except the Limited Common Elements and the Units.

2.10.2 "**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 or common use of more than one but fewer than all Owners.

- 2.11 "**Common Expense**" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (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 IX; and (iv) all other expenses lawfully determined to be common expenses by the Executive Board.
- 2.12 "**Declaration**" means this Declaration and the Map, and any amendments and supplements thereto.
- 2.13 "**Eligible Mortgagee**" means a First Mortgagee who (i) is also a bank, savings and loan association, insurance company, real estate mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC") or any other lender generally recognized as an institutional lender, and (ii) has notified the Association, in writing, of its name and address, and that it holds the First Mortgage on one or more Units. The notice must include the Unit number and street address of the Unit on which it has such security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the information and afforded the rights described in Articles XVI and XVII below.
- 2.14 "**Executive Board**" means the governing body of the Association.
- 2.15 "**Expansion Property**" means the real property described on Exhibit B attached hereto which Declarant may submit to the terms of this Declaration by one or more Supplemental Declarations and Maps.
- 2.16 "**First Mortgage**" means any Mortgage the priority of which is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- 2.17 "**First Mortgagee**" means any person named as a Mortgagee in any First Mortgage.
- 2.18 "**Manager**" means a Person engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.
- 2.19 "**Map**" means the maps and plats of Homestead Condominiums depicting and describing the Units and Common Elements as recorded in the records of the Office of the Clerk and Recorder, as amended and supplemented from time to time.
- 2.20 "**Member**" means every Person that holds membership in the Association.
- 2.21 "**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.



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- 2.22 "**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.
- 2.23 "**Owner**" means the owner of record, whether one or more Persons, of fee simple title to any Unit, and also includes the purchaser under a contract for deed covering a Unit with a current right of possession and interest in the Unit.
- 2.24 "**Owner's Agent**" means the Owner's lawful family members, agents, employees, invitees, licensees or tenants.
- 2.25 "**Person**" means a natural person, a corporation, a partnership, an association, a trust, or any other lawful entity or any combination thereof.
- 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 Commons Elements.
- 2.27 "**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 both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.
- 2.28 "**Supplemental Declaration**" means an instrument that amends this Declaration.
- 2.29 "**Supplemental Map**" means a supplemental Map of the Project that depicts any change in the Project through a Supplemental Declaration.
- 2.30 "**Unit**" means, with respect to enclosed units intended for dwelling, one individual airspace which is contained within the perimeter windows, doors and unfinished surfaces of perimeter walls, floors and ceilings and the individual airspace contained within the boundaries of the garage appurtenant to the dwelling unit as shown on the Map, together with the appurtenant interest in the Common Elements.

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 III - NAME, DIVISION INTO UNITS; POSSESSION**

- 3.1 ***Name.*** The name of the Project is HOMESTEAD. The Project is a residential condominium common interest community pursuant to the Act.
- 3.2 ***Association.*** The name of the Association is HOMESTEAD CONDOMINIUMS OWNERS ASSOCIATION. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.
- 3.3 ***Number of Units.*** The initial number of Units in the Project is five (5). Declarant reserves the right to expand the Project to a maximum number of five hundred (500) Units,



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provided, however, the Declarant reserves the right to further subdivide Units (and thereby create additional Units up to the maximum number allowed by any governmental entity having jurisdiction over the Real Estate; the "Maximum Units") and to combine Units, all as more particularly set forth in this Declaration.

3.4 **Identification of Units.** The identification number and street address of each Unit is shown on the Map.

3.5 **Descriptions of Units.**

3.5.1 **Units Generally.** Each dwelling Unit, the appurtenant interest in the Common Element 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 one Unit. Any attempted transfer of the appurtenant interest in the Common Elements or Limited Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

3.5.2 **Description.** Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Unit shall describe it by its Unit and Building number as follows:

"Unit \_\_\_\_\_, Building \_\_\_\_\_, Homestead Condominiums, City of Greeley, County of Weld, State of Colorado, according to the Condominium Map recorded \_\_\_\_\_, 200\_\_ at Reception No. \_\_\_\_\_, and the Declaration of Covenants, Conditions, Restrictions and Easements for Homestead recorded \_\_\_\_\_, 2006 at Reception No. \_\_\_\_\_, in the records of the Weld County Clerk and Recorder, as may be amended and supplemented."

3.6 **Possession.** Each Owner shall be entitled to the exclusive ownership and possession of his Unit. Each dwelling Unit shall be used and occupied only as a residence.

**ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS: ASSOCIATION OPERATIONS**

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

4.2 **Transfer of Membership; No First Right of Refusal.** An Owner shall not transfer, pledge or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Unit and then only to the purchaser or Mortgagee of his Unit. 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.

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 any Units. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in



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Association matters as set forth in Section 2.2.2 above. Each Owner, including Declarant, is subject to all the rights and duties assigned to Owners under the Association Documents.

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 during the term of Declarant Control. "Declarant Control" begins with the appointment of the initial Executive Board and continues until the earlier of (a) five (5) years from the date of recording the Declaration, (b) sixty (60) days after Declarant conveys seventy-five percent (75%) of the Units that may be created to Owners other than Declarant, (c) two (2) years after the last conveyance of a Unit by Declarant in the ordinary course of business, or (d) two (2) years after the right to add new Units was last exercised (if such right is reserved by Declarant in this Declaration). Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded 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. Declarant Control is further limited sixty (60) days after the following events: (a) Declarant conveys twenty-five percent (25%) of the Units that may be created to Owners other than Declarant, to the extent of one-fourth (1/4) of the members of the Executive Board (minimum of one), and (b) Declarant conveys fifty percent (50%) of the Units that may be created to Owners other than Declarant, to the extent of one-third (1/3%) of the members of the Executive Board.

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. The Association shall maintain such books and records as may be required under the Act.

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. The Manager shall not have the authority to make expenditures except as directed by the Executive Board.

4.7 **Rights of Action.** The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all 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. The 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 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 any provision of the



Association Documents shall not be deemed a waiver of the right to enforce that or any provision thereafter.

4.8 **Implied Rights and Obligations.** The Association may exercise any right or privilege, and shall have the duty to perform all obligations expressly granted to or imposed upon the Association in the Association Documents, by the Act and by the Colorado Revised Nonprofit Corporation Act.

4.9 **Notice.** Any notice to an Owner by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or upon the third (3<sup>rd</sup>) business day after deposit in the US Mail, 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 V - POWER OF THE EXECUTIVE BOARD OF THE ASSOCIATION**

5.1 **Generally.** Except as otherwise provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, including without limitation to:

5.1.1 Adopt and amend the Bylaws and any rules and regulations;

5.1.2 Adopt and amend budgets and collect Assessments;

5.1.3 Hire and terminate management agents and other employees, agents and independent contractors;

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

5.1.5 Make contracts and incur liabilities, except that any contract with the Declarant may not exceed three years and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice;

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

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

5.1.8 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: (a) Owners entitled to cast at least two-thirds (2/3) of the votes agree to that action, (b) the provisions of subsection 17.3.3 are followed with respect to approval of Eligible Mortgagees, and (c) 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;

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- 5.1.9 Grant easements, leases, licenses and concessions through or over the Common Elements;
- 5.1.10 Impose and receive any payments, fees or charges for the use, rental or operation of the General Common Elements;
- 5.1.11 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 including without limitation any rules and regulations;
- 5.1.12 Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;
- 5.1.13 Provide for indemnification of its officers and Executive Board and maintain directors' and officers' liability insurance;
- 5.1.14 Assign its right to future income, including the right to receive Assessments;
- 5.1.15 Exercise any other powers conferred by the Act or Association Documents;
- 5.1.16 Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- 5.1.17 Exercise any other powers necessary and proper for the governance and operation of the Association.

5.2 **Association Agreements.** Any agreement for professional management of the Project must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty (30) days written notice. The Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into during the Declarant Control Period unless the Association is provided with a right of termination of any such contract or lease without cause, without penalty, any time upon not more than thirty (30) days' notice.

#### **ARTICLE VI - MECHANIC'S LIENS**

6.1 **No Liability.** If any Owner shall cause any material to be incorporated into his Unit or any labor to be performed therein, no Owner of any other Unit, nor the Association, 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 his Unit.



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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, Owner's Unit or the Association (whether or not such lien or order is valid or enforceable), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association 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 there from.

6.3 **Association Action.** Labor performed or materials furnished for the Common Elements, if duly authorized by the Association in accordance with the Association Documents, 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 Units or Owners.

### **ARTICLE VII - EASEMENTS**

7.1 **Recorded Easements.** The Property shall be subject to all easements as shown on any Map or plat of the Project, those of record (including those set forth on Exhibit D attached hereto), those provided in the Act (including without limitation easements for encroachment set forth in Section 33-33.3-214 of the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article VII.

7.2 **Easement for Construction.** Declarant, for itself, its successors and assigns, and the Association, 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 other improvements, 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 Expansion Property or other real property owned by Declarant, or other properties abutting and contiguous to the Property or Expansion 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.

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 without limitation 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 Common Elements and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the roofs and exterior walls of the Units, all in a manner customary for such companies, subject to approval by the Association.



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7.4 **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 interest and benefit of the Owners and 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 reasonable restriction on the use of Common Elements by the Association, such as for closure for repairs and maintenance.

7.5 **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and similar emergency agencies or Persons to enter upon the Property in the necessary performance of their duties.

7.6 **Support Easement.** Each Unit is subject to a blanket easement for support and a blanket easement for the maintenance of structures or improvements presently situated or to be built in the future on the Property or any Expansion Property.

#### **ARTICLE VIII - MAINTENANCE**

8.1 **Maintenance by Owners.** Each Owner shall, at his expense, maintain and keep in good repair the interior of his Unit 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 take or permit any action that will impair the structural soundness or integrity of the Common Elements or impair any easement. Each Owner shall be responsible for the maintenance, repair and replacement of all interior non-bearing walls of his Unit, and the surface materials thereon such as plaster, drywall, paneling, wallpaper, paint, tile and carpeting of the walls, ceilings and floors within the Unit, including all doors, windows and screens. Each Owner shall be responsible for the installation and maintenance of any landscaping in any patio or similar Limited Common Elements appurtenant to his Unit, if applicable. The Association reserves the right to grant the maintenance responsibility to the Unit Owner of certain areas on each Unit and of other Limited Common Elements, and the Unit Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner.

8.2 **Owner's Failure to Maintain or Repair.** In the event that a Unit (including the allocated Limited Common Elements) is not properly maintained and repaired, 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 to substantially the same condition in which they existed prior to the damage or destruction those portions of the damaged or destroyed Unit for which the Owner is responsible, then the Association, after notice to the Owner and with the approval of the Executive Board (after a determination by the Executive Board that the condition of such Unit negatively impacts other Owners or the value of other Units within the Project) shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit to good condition and repair. The Owner of the Unit, upon demand, shall reimburse all costs incurred by the Association in connection with the restoration. All



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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 X below.

8.3 **Maintenance by Association.** The Association shall be responsible for the maintenance and repair of the Common Elements (except as set forth in Section 8.1 above and unless necessitated by damage caused by the negligent or wrongful act or omission of a Unit Owner or Owner's Agent as set forth in Section 8.4 below) the cost of which shall be the Common Expense of all Owners. This maintenance shall include without limitation the upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping and related improvements, fences, gates, signage, irrigation systems, sidewalks, driveways and other improvements, if any, located in the Common Elements. 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.

8.4 **Association Maintenance as Common Expense.** The cost of maintenance, repair and replacement 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 therefore set forth on Exhibit C. The cost of repair of any damage to any part of a Unit resulting from the maintenance, 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 be a Common Expense of all of the Owners. However, if such damage is caused by negligent or wrongful acts or omissions of a Unit Owner or Owner's Agent, then such Unit Owner shall be responsible and liable for the cost to repair such damage, to the extent that Owner's or Owner's Agent's negligence or wrongful acts or omissions caused such damage.

8.5 **Easement for Maintenance, Repair and Replacement of Common Elements.** Each Owner and the Association shall have the irrevocable right, to be exercised by the Association, its employees, agents and contractors, of 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, or at any hour for making emergency repairs, maintenance or inspection necessary to prevent damage to the Common Elements or any Unit. In the event insurance proceeds under Article IX 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.

8.6 **Limited Common Element Damage.** In the event of damage or destruction of a Limited Common Element from any cause other than the negligent act or omission of an Owner or Owner's Agent, the Owners of the Units to which the Limited Common Element is attributable shall bear equally the expense to repair or replace 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 negligent act or omission.

8.7 **Association Power.** The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive and a nuisance. No Owner shall make any addition or other alteration to any portion of the Common Elements, no matter how minor, without the express written consent of the Executive Board.

**ARTICLE IX - INSURANCE**

9.1 **General Insurance Provisions.** The Association shall obtain, maintain and pay the cost, out of the assessments levied under Article X below, the following insurance policies with reputable insurance companies authorized to do business in Colorado:

9.1.1 **Hazard Insurance Coverage.** Insurance against fire, with extended coverage, vandalism, malicious mischief, all-risk, replacement cost, agreed amount (if the policy includes co-insurance), 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 typically financed by a Mortgage purchased or insured by an Agency, but excluding any improvements made by Unit Owners and building excavations and foundations. Maximum deductible amounts for such policy shall be determined by the Executive Board, provided, however, that if an Agency requires specific deductibles, the Executive Board shall follow such Agency's requirements. 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 \$1,000,000 or the insurable value of the buildings housing the boiler or machinery shall also be obtained. The Association shall obtain insurance covering the original design and specifications of each Unit. Each Unit Owner shall be responsible for obtaining additional or supplemental insurance covering any additions, alterations or improvements to his Unit that increase the replacement value of his Unit. In the event that satisfactory arrangement is not made for additional insurance 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 the original design and specifications of a Unit for which the insurance is increased as herein provided may be the subject of a lien for nonpayment as provided in Section 10.8 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



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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, 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 contracts of the Association and such other risks as are customarily covered with respect to condominiums similar to the Project in the Weld County area including automobile liability insurance. The Executive Board shall not enter into employment contracts or independent contractor contracts of any kind unless the contracting party provides evidence (such as a certificate of insurance) to the Executive Board that such party has current and satisfactory insurance, including workers compensation insurance, commercial general liability insurance and automobile insurance naming the Association as an additional insured.

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 Owners. Each Owner shall be an insured person under the policy with respect to liability arising out of such 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 percentage of the Mortgagee's Unit's Allocated Interest in the Common Elements. The insurance company shall waive its rights of subrogation under the insurance policy against any Owner or member of the Owner's household. No act or omission by any Owner, unless acting within the scope of such 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 Owner covering the same risk covered by the policy, the Association's policy shall provide primary coverage.

Insurance coverage on (a) the furnishings and other items of personal property belonging to an Owner, (b) any additions and alterations to a Unit which increase the Unit's replacement value above that of the original specifications for the Unit (unless financed by a Mortgage to be purchased or insured by an Agency), (c) casualty and public liability insurance coverage for individual Units an appurtenant Limited Common Elements associated therewith, and (d) workman's compensation insurance covering work within individual Units or on the Limited Common Elements associated therewith, shall be the responsibility of the Owner of the Unit.

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 IX 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 cancelled 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 Documents. If the insurance described in Article IX is not reasonably available, or if any policy of insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association

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promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners and First Mortgagees.

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 condominium common interest community created by this Declaration is terminated.

9.4 **Insurer Obligation.** An insurer that has issued any insurance policy required to be obtained/maintained by the Association 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 non-renewal 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 any Agency.

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 condominium common interest community created by this Declaration is terminated, which requires the written consent of sixty-seven percent (67%) of all Owners;

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, and (b) if any Limited Common Elements that are not to be rebuilt, one hundred percent (100%) of the Owners of the Units to which the Limited Common Element(s) are appurtenant; 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.

All 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 Expense Allocated Interests.

9.6 **Premiums are Common Expense.** Premiums and other related expenses for insurance that the Association obtains/maintains 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), or the Association maintains other coverage attributable to some but not all of the Units (such as boiler insurance), the Association reserves the right to charge the Owners of such Units an amount equal to the premium attributable to such additional insurance coverage.

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, who handle or are responsible for handling the funds belonging to or administered by the Association. Such coverage shall be in an amount not less than the greater of (a) twenty-five thousand dollars (\$25,000) or (b) the estimated maximum of funds, including reserve funds, in the custody of the Association or Manager as the case may be, at any given time during the term of each policy 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 or bonds must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bonds 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."

9.8 **Workers' Compensation Insurance.** The Association 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.

9.9 **Flood 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.

9.10 **Directors and Officers Insurance.** The Association shall maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of the Executive Board against any liability asserted against a member of the Executive Board or any officer of the Association incurred by him in his capacity of or arising out of his status as a member of the Executive Board or officer of the Association. 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 X - ASSESSMENTS**

10.1 **Obligation.** Each Owner, including Declarant while an Owner of any Unit, is obligated to pay to the Association (1) Annual Assessments, (2) Special Assessments, and (3) Default Assessments. The omission or failure of the Association to fix or levy any Assessments for any assessment period or purpose shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

10.2 **Budget.** The proposed budget shall be submitted to the Owners for consideration pursuant to Section 38-33.3-303(4) of the Act. Unless the proposed budget is rejected by eighty percent (80%) of all Owners, the budget shall be deemed ratified and adopted.

10.3 **Annual Assessments.** Annual Assessments made for Common Expenses shall be based upon the approved budget. Estimated Common Expenses shall include, but shall not be limited to, the cost of (a) routine maintenance, repair, renovation, replacement and operation of the Common Elements, (b) management fees and expenses, (c) insurance premiums, (d) water and sewer charges for the Project, (e) utility charges for the Common Elements, (f) all assessments, fees, charges or other amounts the Project is obligated to pay pursuant to any agreements or encumbrances, (g) legal, accounting, management and other professional fees, (h) all other expenses and liabilities incurred by the Association by reason of the existence and operation of the Association and its rights and obligations pursuant to the Association Documents, (i) payment of any shortfall remaining from any previous assessment period, and (j) the creation of reasonable and adequate contingencies and reserves for insurance deductibles and anticipated periodic maintenance, repairs and replacement of improvements within the Common Elements, as reasonably determined by the Executive Board. Any surplus funds from Annual Assessments shall be maintained in a reserve fund or used for Association expenses as determined by the Executive Board. 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.

10.4 **Commencement and Frequency of Assessments.** Annual Assessments shall commence for all Units within the first phase submitted to the terms of this Declaration upon the conveyance of the first Unit in the first phase of the Project by Declarant to a third-party purchaser. Thereafter, Annual Assessments shall begin for all Units added by any new phase upon the submission of each new phase of the Project to the condominium regime created by this Declaration and the conveyance of the first Unit within that phase to a third-party purchaser. Annual Assessments shall be payable in monthly installments on a prorated basis in advance and shall be due on the first day of each calendar month. Other Common Expense Assessments may be due and payable in any manner determined by the Executive Board.

10.5 **Apportionment of Annual Assessments.** Common Expenses shall be allocated and levied 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.



10.6 *Special Assessments.* In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, 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 10.6 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 Owner's Agents shall be borne by that Owner. Notice in writing of the amount of such Special Assessments and the time for payment shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

10.7 *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 any 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.

10.8 *Effect of Nonpayment; Assessment Lien.* Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date, shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (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 such other rate as the Executive Board may establish;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (v) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (vi) Proceed with foreclosure as set forth in more detail below.



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(vii) Whether or not foreclosure is commenced, apply for the *ex parte* appointment of a receiver for a Unit.

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 Owner shall be required to pay the Association the monthly assessment installments for the Unit during the period of any foreclosure. The Association shall have the power to bid on a Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

10.9 **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 (but shall remain a charge and lien against the Unit). No Owner may exempt himself from liability for the Assessment by abandonment of his Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments or exercising any other remedy pursuant to the Declaration or the Act, 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, and all Owners shall be liable for payment of such fees and costs.

10.10 **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.

10.11 **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' prior written request to the Association's registered agent by personal delivery or certified mail, return receipt requested, any Owner, designee of Owner, Agency, Mortgagee, prospective Mortgagee or prospective purchaser of a Unit shall be furnished with a written statement setting forth the amount of unpaid Assessments, if any, with respect to such Unit. Unless such statement shall be issued by personal delivery or by certified mail, 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.

10.12 **Capitalization of the Association.** The Association may establish and maintain working capital and a reserve fund. Working capital may be used by the Association for any purpose as determined by the Executive Board including without limitation the payment of regular and ongoing expenses of the Association that are not otherwise paid from Assessments. The reserve fund may be used by the Association for emergencies, insurance deductibles in the event of casualty or other loss, capital expenditures for repair or replacement of Common Elements, and



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such other expenses which do not occur on a regular and on-going basis and which are not paid by Assessments, as may be determined by the Executive Board. Upon acquiring title to a Unit from Declarant or any subsequent seller, each Owner shall contribute to the working capital of the Association an amount equal to two-twelfths (2/12) of the then applicable Annual Assessment, and to the reserves of the Association an amount equal to one-twelfths (1/12) of the then applicable Annual Assessment. Such payments shall not be considered advance payments of any Assessments. The working capital and reserve fund contributions made by an Owner shall be a one-time, non-refundable contribution. The working capital contribution shall be deposited in the regular operating account of the Association; however, the reserve fund contribution must be maintained by the Association in a segregated account, and may not be used by the Declarant to defray any ordinary Association expenses or costs, nor to make up any ordinary budget deficits during the period of Declarant control.

10.13 **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 accounts of the Association separate from the operational accounts of the Association, (c) provide to the Association no less than once per quarter an accounting for the previous quarter, and (d) 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 XI - DAMAGE OR DESTRUCTION**

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 or other property covered by insurance written in the name of the Association under Article IX, 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 IX is sometimes referred to as the "Association-Insured Property").

11.2 **Estimate of Damages or Destruction.** As soon as practicable 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 otherwise approved by fifty-one percent (51 %) of First Mortgagees of Units subject to First Mortgages (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.

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



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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, repair and reconstruction.

11.4 **Funds for Repair and Reconstruction.** The proceeds received by the Association from any casualty 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, the Association may, pursuant to Section 11.6, if permitted under the Act, levy, assess and collect 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.

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. 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 in accordance with the Units' Percentage Share of Common Expenses, first to the Mortgagees and then to the Owners, as their interests appear.

## **ARTICLE XII - CONDEMNATION**

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.

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



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are to be repaired or restored, the provisions in Article XI above regarding the disbursement of funds in respect to casualty damage or destruction that 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.

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 upon the approval of fifty-one percent (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 XIII - 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 (a) granting easements pursuant to Article VII, (b) purchasing and maintaining insurance pursuant to Article IX, 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 IX upon their damage or destruction as provided in Article XI, or (c) negotiating and dealing with any authority having the power of condemnation or eminent domain relating to a complete or partial taking as provided in Article XII, 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 XIV - RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS**

14.1 **Addition of Unspecified Real Estate.** Subject to those restrictions set forth in Section 38-33.3-222 of the Act, Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject unspecified real property to the provisions of this Declaration.

14.2 **Reserved Development Rights of Expansion.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to subject additional phases of the Expansion Property to the provisions of this Declaration and expand the Project (Units and Common Elements) to include up to 500 total Units.

14.2.1 *Supplemental Declarations and Supplemental Maps.* Such expansion may be accomplished by the filing for record by Declarant in the office of the Clerk and Recorder one or more Supplemental Declarations and Maps setting forth the Units and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Declarant may exercise such rights for expansion on all or any portion of the Expansion Property in whatever order of development Declarant in its sole discretion, determines. All improvements to be constructed on the Expansion Property shall be substantially completed prior to the recording of the Supplemental Declaration and Map adding additional Units. Declarant shall not be obligated to expand the Project beyond the number of Units initially submitted to this Declaration.

14.2.2 *Expansion of Definitions.* In the event of expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Unit" shall mean the Units as shown on the Map plus any additional Units added by any Supplemental Declarations and Supplemental Maps, and reference to this Declaration shall mean this Declaration as supplemented. Conveyances of all Units shall be effective to transfer rights in all Common Elements as expanded.

14.2.3 *Declaration Operative on Expansion Property.* Units and Common Elements added by Supplemental Declarations and Maps shall be subject to all of the terms and conditions of this Declaration and of any Supplemental Declarations upon recording the Supplemental Declaration(s) and Map(s) with the Clerk and Recorder. In the event that a portion of the Expansion Property is submitted to the provisions of this Declaration, Declarant shall retain the right to, but shall not be obligated to, submit additional portions of the Expansion Property to the provisions of this Declaration. The rights of Declarant and any Successor Declarant, as described herein, shall apply to all portions of the Expansion Property (Units and Common Elements) that are added to this Declaration in accordance with these provisions relating to expansion. No rights or obligations of any character of any Owner in the Expansion Property shall exist until a Supplemental Declaration and Map are filed with the Clerk and Recorder annexing the Owner's Unit to Homestead.

14.2.4 *Effect of Expansion on Allocated Interests.* Upon the construction of additional Units and their inclusion under this Declaration and the filing of the Supplemental Declaration(s) and Map(s) thereof, the Allocated Interests applicable to a Unit shall be as set forth in Section 2.2 above.

14.2.5 *Effect of Expansion on Common Expenses.* Notwithstanding inclusion of additional Units under this Declaration, each Owner (regardless of whether such Owner is the owner of a Unit shown on the original Map or included by a Supplemental Declaration and Map) shall remain fully liable with respect to his obligation for the payment of the Common Expenses of the Association, including the expenses for new Common Areas, if any. The recording of a Supplemental Declaration or Map shall not





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alter the amount of the Common Expenses assessed to a Unit prior to such recording except upon adoption of a new budget pursuant to Article X above.

14.3 **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 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.

14.4 **Other Reserved Rights.** Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to: (a) complete improvements indicated on the plats and Maps, (b) place, maintain, relocate and remove sales offices and models, management offices and signs within the Project so long as Declarant or Successor Declarant continues to be an Owner of a Unit or, if earlier, seven (7) years from the recording of this Declaration with the Clerk and Recorder, (c) to subject the Project to a master association, (d) to make, merge or consolidate the Project with a common interest community of the same form of ownership, (e) to 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, and (f) to control the Architectural Review Committee as set forth in Section 15.3 below.

14.5 **Termination of Rights Reserved.** Except as otherwise expressly reserved in this Declaration, all rights reserved by and to the Declarant shall terminate seven (7) years after the date upon which this Declaration is recorded or upon the sale of all Units, whichever shall first occur; provided, however, such reserved rights may be: (i) reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose; (ii) extended as allowed by law; or (iii) terminated in whole or in part by a written instrument executed by the Declarant in such manner as provided in the Act.

#### **ARTICLE XV - ARCHITECTURAL CONTROL AND DESIGN REVIEW**

15.1 **Common Elements.** No alteration or additions to the Common Elements of any kind shall be made unless first approved in writing by the Executive Board. 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 that the Executive Board reasonably determines do not conform to and harmonize with existing surroundings and structures. All construction activities shall be planned and carried out with a minimum of disruption, unsightliness and noise.

15.2 **Architectural Review Committee.** The Executive Board may at its option establish an architectural review committee (the "Committee") which shall be responsible for the establishment and administration of design guidelines (the "Design Guidelines") to carry out the purposes and intent of this Declaration and to provide advice to the Executive Board on such matters as the Executive Board may request. Unless the Executive Board establishes and maintains a Committee, the Executive Board shall serve and function as the Committee.

15.3 **Membership.** The Committee shall consist of individuals appointed by and responsible to the Executive Board. The Committee shall consist of at least three (3) individuals at least two (2)



of who shall be Owners; provided, however the Declarant shall retain control of the Committee until the expiration of its rights reserved in Article XIV. Members of the Committee shall be appointed to serve for a period of time established by the Executive Board, but in no event for a period of less than one (1) year. The Committee is authorized, upon approval of the Executive Board, to seek the advice of design professionals or other professionals if the need should arise. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the Executive Board.

15.4 **Design Guidelines.** The Committee shall adopt, establish, and publish from time to time the Design Guidelines for the Project and such Design Guidelines shall be an Association Document. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for the Project including, but not limited to, items such as color, texture, structure, size, design, appearance, landscaping and site improvement standards. The Design Guidelines may be modified or amended from time to time by approval of the Executive Board and shall be made available to all Owners and their representatives for review. Further, the Committee may recommend, and the Executive Board, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Project's design review process and design standards is not a substitute for compliance with City or County building, zoning, and subdivision regulations and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction. In the event of a conflict between the terms of this Declaration and the Design Guidelines, the terms of this Declaration shall control.

15.5 **Requirement for Approval.** No improvements shall be constructed, erected, placed, altered, maintained or permitted on any part of the Project, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any part of the Project until plans and specifications with respect thereto satisfactory to the Committee showing the proposed improvements, site location of such improvements, complete building plans and material specifications, and all exterior elevations, materials and colors, landscaping, grading, drainage, erosion control, easements and utilities, and such other information as may be requested by the Committee or Executive Board have been submitted to and approved in writing by the Executive Board. All improvements shall be constructed only in accordance with approved plans. If the Executive Board has not responded to an Owner's request for approval within sixty (60) days of the submission by Owner of all information requested by the Committee and the Executive Board, then such Owner's request shall be deemed approved by the Executive Board. Non-structural, non-mechanical improvements and alterations that are purely cosmetic in nature (e.g., painting, wallpapering, floor coverings, cabinets, light fixtures, etc.) that are completely within a Unit may be undertaken without approval. The Association, upon the approval by the Executive Board and after reasonable notice to the Owner, may enter any Unit or Common Element and remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these Covenants and make all necessary repairs, and the Owner shall immediately reimburse the Association for all expenses incurred in connection with such removal and repair.

15.6 **Criteria for Approval.** The Committee shall recommend approval and the Executive Board shall approve any proposed improvement only if it deems in its reasonable discretion that



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the improvements will not be detrimental to the appearance of the surrounding areas of the Project as a whole, that the appearance of the proposed improvement will be in harmony with the surrounding areas of the Project and that the upkeep and maintenance of the proposed improvement will not become a burden on the Association. Specific factors considered in approving plans include, among other things, conformity and harmony of exterior design, colors and materials with neighboring structures, relation of the proposed improvements to the natural topography; adequacy of drainage, erosion control, grade and finished ground elevation of the structure to that of neighboring structures and natural features of the property, and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Executive Board may condition its approval of any proposed improvement upon the making of such reasonable changes therein as the Committee or Executive Board may deem appropriate.

#### **ARTICLE XVI - MORTGAGEE'S RIGHTS**

The following provisions are for the benefit of First Mortgagees. 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.


16.1 ***Title Taken by Mortgagee.*** Any First Mortgagee who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for up to but not more than six (6) months of accrued Assessments due and payable as of the date title to the Unit is acquired by the Mortgagee.

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

16.3 ***Right to Pay Taxes and Charges.*** Mortgagees may 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 therefore from the Association.

16.4 ***Association Financial Statement.*** Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Unit, the Association shall prepare and furnish within ninety (90) days a financial statement of the Association for the immediately preceding fiscal year. If the requesting Agency or Mortgagee requires audited financials, the Agency or Mortgagee shall be obligated to pay the expense of preparing the audited financials.

16.5 ***Notice of Action.*** Any Eligible 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 the following:

  
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16.5.1 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 (excluding changes resulting from the submission of Expansion Property to the Declaration) 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;

16.5.2 Any proposed termination of the common interest community:

16.5.3 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;

16.5.4 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;

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

16.6 **Action by Mortgagee.** If this Declaration or any Association Documents require the approval of any Agency or Mortgagees, and if any Mortgagee or Agency fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives 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 XVII - DURATION OF COVENANTS AND AMENDMENT**

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

17.2 **Amendment.** This Declaration, or any provision of it, may be amended at any time by approval of Owners holding not less than sixty-seven percent (67%) of the votes possible to be cast under this Declaration. Further, the approval shall first be obtained of fifty-one percent (51%) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) if the amendment to the Association Documents add or delete 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 other than as set forth in Article XIV;
  - 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 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 an Agency or First Mortgages, 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.
- 17.3 ***Amendment for Certain Actions.*** Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial casualty to the Units and/or Common Elements, unless at least two-thirds (2/3) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) and two-thirds (2/3) of all Owners (other than Declarant) of the Units have given their prior written approval, the Association may not:
- 17.3.1 Reallocate the Allocated Interest or obligation of any Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the Percentage Share of Ownership of Common Elements other than as set forth in Article XIV;
  - 17.3.2 Partition or subdivide any Unit;

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17.3.3 Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements by act or omission other than the grant of easements for public utilities or other public purposes consistent with the intended use of the Common Elements and other than as set forth in Article XIV;

17.3.4 Use hazard insurance proceeds for losses to any part of the Property (whether Units or Common Elements) for other than the repair, replacement or reconstruction of the Project.

17.4 **Termination.** Notwithstanding anything else contained in this Declaration, except as provided by the Act, and except in case of condemnation or substantial casualty to the Units and/or Common Elements, unless at least two-thirds (2/3) of Eligible Mortgagees (which percentage is measured by votes allocated to such Units) and ninety percent (90%) of all Owners (other than Declarant) of the Units have given their prior written approval, the Association may not by act or omission seek to abandon or terminate the condominium regime created hereby.

17.5 **Amendment.** 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, the Map and all supplements thereto to the fullest extent permitted under the Act.

#### **ARTICLE XVIII - LIMITS ON TIMESHARES AND NON-OWNER-OCCUPIED UNITS**

18.1 **Timeshares.** 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.

18.2 **Regulation of Non-Owner-Occupied Units.** The Association may exercise the right to control the occupancy of all Units in order to assure eligibility of the Project by any Agency. More than fifty percent (50%) of the Units (or such other percentage as may be required from time to time by any Agencies holding Mortgages) must be Owner-occupied (as a primary residence or second home) at all times. Any Owner wishing to lease a Unit shall be subject to this percentage occupancy requirement and must first apply for authorization from the Association for any non-Owner occupied use. Allowance of an Owner to rent a Unit shall be on a first-come, first-serve basis. The Association may adopt additional rules and regulations with respect to rental of Units to non-Owners.

18.3 **Right to Lease.** Subject to the provisions of Section 18.2, an owner shall have the right to lease his Unit in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) no leases shall be made for less than a six-month period; (ii) all leases shall be in writing and shall provide that the lease is subject to the terms of all Association Documents, (iii) a Unit may be leased only for the uses permitted herein, and (iv) any failure of a lessee to comply with the terms of any Association Documents 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.

**ARTICLE XIX - GENERAL PROVISIONS**

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 invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

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, 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;

19.3 **Severability.** Invalidation of any provision herein shall in no way affect any other provisions, which shall remain in full force and effect.

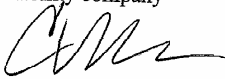
19.4 **Conflicts Between Documents.** In case of conflict between any Association Documents and this Declaration, this Declaration shall control. In case of conflict between the any Association Documents other than this Declaration and the Articles, the Articles shall control. In case of conflict between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

19.5 **Singular Includes the Plural; Gender Includes All.** Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

DECLARED AND MADE the 25<sup>th</sup> day of July, 2006.

DECLARANT:

LANDMARK III LLC, a Colorado  
limited liability company

By:   
Its: Curtis R. Sears, Manager



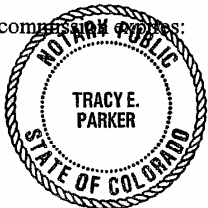
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STATE OF COLORADO )  
  ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July, 2006, by Curtis R. Sears as Manager of Landmark III LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 5-13-2007



MY COMMISSION EXPIRES: 05-13-2007

*Tracy E. Parker*  
\_\_\_\_\_  
Notary Public