

**CONDOMINIUM DECLARATION
FOR
L'AVENIR
(a Common Interest Community)**

Declarant: L'Avenir, LLC, a Colorado limited liability company

Association: L'Avenir Association, a Colorado nonprofit corporation

Type of Common Interest Community: Condominium

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**CONDOMINIUM DECLARATION
FOR
L'AVENIR
(a Common Interest Community)**

This Condominium Declaration for L'Avenir (a Common Interest Community) is made by L'Avenir, LLC, a Colorado limited liability company ("Declarant").

Recitals

A. Declarant owns the real property ("Property") described on **Exhibit A**, attached and incorporated by reference.

B. Declarant desires to create a condominium on the Property, pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq., as it may be amended from time to time ("Act"), in which portions of the real estate will be designated for separate ownership and the remainder of which will be designated for common ownership solely by the owners of the separate ownership portions. This Declaration is intended to supplement the Act. In the event of any conflict between the provisions of this Declaration and mandatory provisions of the Act, the Act (including all amendments to the Act) shall prevail.

C. Declarant has caused or will cause L'Avenir Association, a Colorado nonprofit corporation ("Association") to be organized as a nonprofit corporation under the laws of Colorado for the purpose of performing the functions set forth in this Declaration and provided for in the Act.

1. DEFINITIONS

1.1. General. The following paragraphs define words and phrases which, as used in this Declaration, have the meaning set forth below. In addition, applicable definitions contained in the Act when used herein, have the meaning set forth in the Act except to the extent the Act allows a Declaration to define the same in a different way and this Declaration does so. Defined words and phrases, including both those defined in this Declaration and those defined in the Act, are indicated in this Declaration by capitalizing the first letter of a defined word or of each word in a defined phrase.

1.2. Act. "Act" means the Colorado Common Interest Ownership Act as the same may be amended from time to time.

1.3. Allocated Interests. "Allocated Interests" means the percentage undivided interests in the Common Elements, Common Expense Liability and votes in the Association allocated to each Unit set forth on **Exhibit B**, attached and incorporated by reference.

1.4. Assessments. "Assessments" means all Common Expense Assessments, Special Assessments, and Fines levied by the Board of the Association pursuant to this Declaration, the Bylaws or the Rules and Regulations.

1.5. Association. "Association" means L'Avenir Association, a Colorado nonprofit corporation, its successors and assigns.

1.6. Board. “Board” means the Association’s Board of Directors, which is also the Association’s Executive Board.

1.7. Building. “Building” means the multi-story structure located on the Property within which the Units are located which shall be occupied for residential purposes.

1.8. Bylaws. “Bylaws” means the Bylaws adopted by the Association as amended from time to time.

1.9. City. “City” means the City of Fort Collins, Colorado.

1.10. Clerk and Recorder. “Clerk and Recorder” means the Clerk and Recorder of Larimer County, Colorado.

1.11. Common Elements. “Common Elements” means all portions of the Common Interest Community other than the Units. The Common Elements are owned by the Unit Owners and consist of General Common Elements and Limited Common Elements.

1.12. Common Expense Assessments. “Common Expense Assessments” means all Assessments made for Common Expenses, except for Special Assessments and Fines.

1.13. Common Expense Liability. “Common Expense Liability” means the liability for Common Expenses allocated to each Unit pursuant to this Declaration.

1.14. Common Expenses. “Common Expenses” means expenditures made or liabilities incurred by or on behalf of the Association pursuant to this Declaration, together with any allocations to reserves.

1.15. Common Interest Community. “Common Interest Community” means the Property, the Units and the Common Elements submitted to this Declaration.

1.16. Courtyard. “Courtyard” means the open courtyard area designated on the Map to the South of the Building.

1.17. Declarant. “Declarant” means L’Avenir, LLC, a Colorado limited liability company, its successor and assigns, or any Person or group of Persons acting in concert with L’Avenir, LLC who:

1.17.1. As a part of a common promotional plan, offers to dispose of to a Purchaser such Declarant’s interest in a Unit not previously disposed of to a Purchaser; or

1.17.2. Reserves or succeeds to any Special Declarant Right.

1.18. Declaration. “Declaration” means this Declaration and the Map together with all amendments.

1.19. Development Agreement. “Development Agreement” means the Development Agreement for the Common Interest Community entered into between Declarant and the City and recorded with the Clerk and Recorder on February 2, 2018 at Reception No. 20180006946.

1.20. Fines. “Fines” means any monetary penalty imposed by the Board against a Unit Owner because of a violation of this Declaration, the Articles of Incorporation of the Association, its Bylaws or the Rules and Regulations by such Unit Owner, a member of the Unit Owner’s family or a tenant or guest of the Unit Owner or a member of a family of a tenant of a Unit Owner.

1.21. Flex Space. “Flex Space” means the Limited Common Elements allocated to Units A and D, respectively, which may be used as a patio or parking space as set forth in **Article 3.11.4.3**.

1.22. Garage. “Garage” means the parking garage known as Old Town Garage located at the southeast corner of East Mountain Avenue and Remington Street.

1.23. General Common Elements. “General Common Elements” means all tangible physical properties of the Common Interest Community except any Limited Common Elements and the Units.

1.24. Limited Common Elements. “Limited Common Elements” means those portions of the Common Elements allocated by this Declaration, the Map or the Act for the exclusive use of one or more Units, but fewer than all of the Units. If any chute, flue, duct, wire, conduit, pipe, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit: (a) any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit; and (b) any portion thereof serving more than that Unit (whether within the designated boundaries of a Unit or not) is a Limited Common Element allocated to the Units served thereby. Any solar panels which provide electricity to one Unit are Limited Common Elements allocated to such Unit.

1.25. Map. “Map” means the condominium map, or the condominium maps collectively, of the Common Interest Community, together with all supplements and amendments.

1.26. Member. “Member” means the Person, or if more than one, all Persons collectively, who constitute the Owner of a Unit.

1.27. Mortgagee. “Mortgagee” means any Person who has a Security Interest in a Unit and who has provided written notice of such interest to the Association. “First Mortgagee” means a Mortgagee who has a First Security Interest in a Unit.

1.28. Owner. “Owner” or “Unit Owner” means the Declarant or other Person who owns a Unit but does not include a Person having an interest in a Unit solely as security for an obligation.

1.29. Parking Spaces. “Parking Spaces” means four (4) parking spaces required to be owned or leased by the Association in the Garage for use by the Owners pursuant to Section II(H) of the Development Agreement. The term “Parking Space” shall refer to the Parking Spaces individually. The location of each Parking Space within the garage is subject to change and one Parking Space shall be allocated to the Owner of each Unit by the Board.

1.30. Person. “Person” means any natural person, corporation, partnership, limited liability company, governmental entity, association, trust, or any other entity or combination thereof.

1.31. Property. “Property” means the real property described on **Exhibit A**.

1.32. Purchaser. “Purchaser” means a Person, other than a Declarant, who, by means of a transfer, acquires a legal or equitable interest in a Unit, other than:

1.32.1. A leasehold interest in a Unit of less than 40 years, including renewal options, with the period of the leasehold interest, including renewal options, being measured from the date the initial term commences; or

1.32.2. A Security Interest.

1.33. Rules and Regulations. “Rules and Regulations” means any instruments, however denominated, which are adopted by the Association for the regulation and management of the Common Interest Community, including any amendment to those instruments.

1.34. Security Interest. “Security Interest” means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation. “First Security Interest” shall mean and refer to a Security Interest in a Unit prior to all other Security Interests except the Security Interest for real property taxes and assessments made by Larimer County, Colorado, or other governmental authority having jurisdiction over the Common Interest Community.

1.35. Shared Car. “Shared Car” means the passenger car required to be maintained by the Association pursuant to Section II(H) of the Development Agreement for the shared use of the Owners as more fully set forth in **Article 17** of this Declaration.

1.36. Special Declarant Rights. “Special Declarant Rights” means rights which Declarant has the right to exercise pursuant to the Act even though not required to be enumerated in the Declaration.

1.37. Transit Passes. “Transit Passes” means four (4) transit passes required to be maintained by the Association pursuant to Section II(H) of the Development Agreement. The term “Transit Pass” shall refer to the Transit Passes individually. One Transit Pass shall be allocated to the Owner of each Unit by the Board.

1.38. Trash Enclosure. “Trash Enclosure” means the any enclosure containing trash receptacles designated on the Map and being part of the General Common Elements.

1.39. Unit. “Unit” means a physical portion of the Common Interest Community which is designated for separate ownership or occupancy and the boundaries of which are described and are determined from this Declaration and the Map. A Unit further includes the undivided interest in the Common Elements appurtenant to such Unit. Subject to the provisions contained in the definition of Limited Common Elements, above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of the Unit are a part of the Unit.

2. SUBMISSION OF PROPERTY AND DEVELOPMENT AGREEMENT

2.1. Declaration. The Declarant declares that the Property shall be held, sold, conveyed, transferred, leased, subleased, and occupied subject to the following easements, covenants, conditions, and restrictions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and shall be binding upon and inure to the benefit of all parties having

any right, title, or interest in the Property or any portion thereof, their heirs, personal representatives, successors, and assigns. Additionally, Declarant submits the Property to the provisions of the Act. To the extent this Declaration is silent on a matter covered by the Act, it is intended that the provisions of the Act apply. In the event the Act is repealed, the Act as it was in effect on the effective date of such repeal shall remain applicable.

2.2. Development Agreement. The Property is also subject to the provisions of the Development Agreement. Declarant, as the “Developer” under the Development Agreement, hereby assigns and the Association hereby accepts all of the obligations of the Developer set forth in Section II(H) of the Development Agreement which include, without limitation, the following requirements:

2.2.1. Maintain four (4) Parking Spaces in the Garage. One Parking Space will be allocated to each Unit Owner by the Board;

2.2.2. Maintain four (4) Transit Passes. One Transit Pass shall be allocated to the Owner of each Unit by the Board; and

2.2.3. Provide and maintain an on-site car share pursuant to the terms of **Article 17** for use by the Owners of the Units.

3. COMMON INTEREST COMMUNITY

3.1. Overview of Common Interest Community. The Common Interest Community is a residential community and will not be used for commercial purposes except as expressly permitted herein.

3.2. Name. The name of this Common Interest Community is L’Avenir.

3.3. Association. The name of the Association is L’Avenir Association, a Colorado nonprofit corporation.

3.4. Condominium. The Common Interest Community is a condominium.

3.5. County. The name of every county in which any part of the Common Interest Community is situated is Larimer County, Colorado.

3.6. Legal Description. The legal description of the Property initially included in the Common Interest Community is set forth in attached **Exhibit A**.

3.7. Maximum Number of Units. The maximum number of Units that the Declarant reserves the right to create within this Common Interest Community is four (4).

3.8. Boundaries/Description of Units. The boundaries and the identifying number of each existing Unit are set forth on the Map of the Property. Each Unit, the appurtenant interest in the Common Elements and the appurtenant use of Limited Common Elements, shall comprise one Unit, shall be inseparable and may be transferred, leased, devised or encumbered only as a Unit. Any instrument affecting a Unit may describe it as follows:

Unit _____, L’Avenir Condominiums, City of Fort Collins, Larimer County, Colorado, according to the L’Avenir Condominium Map recorded at Reception

No. 20200109037, and the Condominium Declaration recorded at Reception No. [Insert Reception No. of this Declaration] in the records of the Clerk and Recorder of Larimer County, Colorado, as amended from time to time.

3.9. Recording Data. All easements and licenses to which the Common Interest Community is presently subject in addition to those contained in the Development Agreement are listed on **Exhibit C**, attached and incorporated by reference. In addition, the Common Interest Community may be subject to other easements or licenses granted by the Declarant or the Association pursuant to the terms of this Declaration.

3.10. Map. The Map may be filed for record in whole or in parts or sections, from time to time, as the stages of construction of the Units and other improvements are substantially completed or as already constructed buildings are added to the Map. The Map or any part of a section thereof depicting Units shall not be filed for record until the Building in which the Units are located has been substantially completed. Declarant reserves to itself and the Association the right from time to time without the consent of any Owner being required to amend the Map in order to conform the Map to the actual location of any constructed improvement or to establish any Common Element as it actually exists.

3.11. Common Elements.

3.11.1. Identification. The Common Elements shall be as identified on the Map. To the extent not specifically identified on the Map, they shall be as described in this Declaration. To the extent not described in this Declaration, they shall be as described in the Act. If there is a conflict between the identification of Common Elements on the Map and any description of Common Elements in this Declaration, the Map shall control.

3.11.2. Ownership. The Common Elements shall be owned by all Unit Owners in undivided interests as tenants-in-common. Each Owner's percentage interest in the Common Elements is set forth on **Exhibit B**. No Common Elements or portion thereof may be conveyed separate from a Unit.

3.11.3. Use of General Common Elements. Each Owner may use the General Common Elements in accordance with this Declaration and with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners, or third parties who may have rights in the General Common Elements. The Board may adopt Rules and Regulations governing the use of the General Common Elements provided that such Rules and Regulations shall be uniform and non-discriminatory and shall not conflict with this Declaration. Easement rights relating to the General Common Elements are described in **Article 9** below.

3.11.4. Allocation and Use of Limited Common Elements.

3.11.4.1. Certain Limited Common Elements are allocated to a single Unit or multiple Units, but less than all of the Units. For example, decks, balconies and solar panels serving a single Unit are Limited Common Elements allocated solely to the Units adjacent to the decks and balconies or which are served by the solar panels, and the use of those decks, balconies and solar panels is restricted to the Owners of those specific Units, together with such Owners' family members, tenants, guests and invitees.

3.11.4.2. Limited Common Elements are appurtenant to the Unit or Units to which allocated, shall be considered transferred with any conveyance of any such Unit or Units and may not be transferred apart from such Unit or Units. Limited Common Elements may be reallocated as provided in **Article 3.11.5** below.

3.11.4.3. Units A and D, respectively, are allocated the Limited Common Elements adjacent to such Unit on the ground floor as shown on the Map ("Flex Space"). The Flex Space may be used by the adjacent Owner as either: (i) a parking space for parking one (1) operable passenger vehicle; or (ii) a patio. If it is used as a patio, the Owner of the adjacent Unit shall separate the Flex Space from the surrounding area with planters located on the edges of the Flex Space with room for up to two pedestrian exits. The Owner is also permitted to lay pavers or other non-permanent surface coverings on the Flex Space if it is used as a patio. The planters, the vegetation to be planted in them and any surface coverings must be approved by the Association in advance and the Owner of the applicable Unit will submit all documentation, renderings, depictions or other information reasonably requested by the Association in connection with such approval. In reviewing any request, the Association will ensure that the planters, vegetation and surface coverings conform to the aesthetic and architectural standards of the Building. Any patio must be maintained by the adjacent Unit Owner in good condition, free of clutter or debris, and all furniture must be designed for outside use and kept in good condition. Any approvals for use of the Flex Space required from the City or any other governmental authority must be obtained by the adjacent Owner at its cost and in a timely manner.

3.11.5. Reallocation of Limited Common Elements. Limited Common Elements may be reallocated between or among Units in accordance with the provisions of §38-33.3-208 of the Act. Declarant reserves the right to allocate specified areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the Owners of Units to which the specified areas shall become appurtenant (which Units may be owned by Declarant).

3.12. Energy Efficiency. The Units and Common Elements are intended to create so-called "net zero living" and Declarant intends to apply to the International Living Future Institute to meet some or all of the requirements of the Living Building Challenge. **However, the energy efficiency and sustainability of all Units and Common Elements depends primarily on the use and operation of each Owner. Therefore, Notwithstanding the foregoing, anything herein to the contrary or any other warranty or representation by any Person, the Declarant does not warrant or represent that the Units or the Common Elements will create "net zero living" nor be eligible to obtain any other energy efficiency or sustainable living certification of any kind including, without limitation, the Living Building Challenge.**

3.13. Efficiency Programs and Rebates. Pursuant to those certain Project Commitment Terms dated August 10, 2017 and August 10, 2018 (together, the "DDA Agreement"), The Fort Collins Downtown Development Authority has agreed to pay Declarant the sum of \$50,000 upon the Building meeting the requirements of the Living Building Challenge. As set forth above, Declarant makes no representation or warranty as to whether the Building will meet the requirements of the Living Building Challenge. Declarant has or will transfer its right to receive the proceeds from the DDA pursuant to the DDA Agreement to the Association. If any such proceeds are received by the Association, the Association may elect to: (a) deposit all or a portion of such proceeds with the Associations funds to fund Common Expenses; or (b) disburse all or a portion of such proceeds to the Owners in proportion to their Common Expense Liability set forth on **Exhibit B**. Nothing herein shall be construed as a representation or warranty by Declarant or any other Person that any funds will be received pursuant

to the DDA Agreement. Declarant will be entitled to retain all other sums paid pursuant to the DDA Agreement, if any.

4. ASSOCIATION

4.1. Powers and Authority. The Association shall manage the business and affairs of the Common Interest Community in accordance with this Declaration, the Association's Articles of Incorporation and its Bylaws. To manage the Common Interest Community business and affairs, the Association shall have and may exercise with regard to the Common Interest Community all powers and authority of a unit owner's association under the Act (specifically including without limitation (a) the power to adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments for Common Expenses from the Owners of Units within the Common Interest Community; and (b) the power to assign its right to future income, including the right to receive Common Expense Assessments, provided the Association determines that such assignment will not impair the ability of the Association to perform its duties under this Declaration). Additionally, the Association, acting through its Board, shall have the power, after notice and an opportunity to be heard, to levy reasonable Fines and penalties for violations of any provision of this Declaration, the Bylaws and Rules and Regulations. The remedies for collection of any such Fines and penalties shall be as provided in **Article 6** below.

4.2. Membership. All Unit Owners shall be Members of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of a Unit shall be the sole qualification for membership. When more than one Person holds an ownership interest in any Unit, all such Persons shall be Members.

4.3. Voting. Votes shall be allocated among the Units as set forth on **Exhibit B**. When more than one Person holds an ownership interest in any Unit (such that all of those Persons are Members in the Association), the vote or votes allocated to such Unit shall be cast by a single Owner as the Owners among themselves determine, but in no event shall more votes be cast with respect to any Unit than such Unit's allocation of votes as set forth in this Declaration. The vote of one Owner of a Unit shall be considered the vote of all Owners of such Unit unless an Owner objects to such vote as set forth in the Bylaws.

4.4. Directors. There shall be four (4) members of the Board of the Association; provided, however, there may be less than four (4) members of the Board as a result of temporary vacancies due to death, disability or other cause. Each Unit Owner shall appoint one (1) member of the Board; provided, however, all members of the Board shall be: (a) an Owner; (b) an individual who holds an equity interest, directly or indirectly, in any Owner that is a corporation, partnership, limited liability company, association, or any other entity; (c) the settlor, trustee or a beneficiary of any trust that is an Owner; or (d) the guardian or conservator of any individual who would otherwise be qualified to be a director pursuant to this **Article 4.4**. In the event there are multiple Owners of a Unit, a majority of such Owners shall appoint the member of the Board for such Unit. In the event of a tie no member of the Board for such Unit will be appointed until the Owners of such Unit appoint a member by a majority vote.

4.5. Declarant Control. Notwithstanding the provisions of **Article 4.4**, the Declarant, or Persons designated by it, may determine the number of members of the Board and appoint and remove officers of the Association and members of the Board until the earlier of the following dates:

4.5.1. The date that is 60 days after conveyance to Purchasers of 75% of the maximum number of Units that may be created by Declarant under this Declaration; or

4.5.2. The date that is two years after the last conveyance of a Unit by Declarant or a successor Declarant in the ordinary course of business.

The Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before the expiration of that period, in which case the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or the Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

5. MAINTENANCE

5.1. Owners. Each Owner shall maintain and keep in good repair and condition the interior of such Owner's Unit, including the non-supporting walls, the materials (such as, but not limited to, plaster, drywall, paneling, wallpaper, wall paint, carpeting, floor tile and flooring, but not including the sub-flooring) which make up the finished surfaces of the perimeter walls, ceilings and floors within such Owner's Unit. Each Owner shall also maintain, keep in good repair and replace all Limited Common Elements allocated exclusively to such Owner's Unit including, without limitation, all decks and balconies (including associated railings), the Flex Space, HVAC units (heating, ventilating and air conditioning units and associated components such as geothermal pumps), exterior doors (including door surfaces, knobs, locks and garage doors), windows (frames and glass), and screens; provided, however, no owner shall be permitted on the roof of the Building and all maintenance of the roof (including structural portions and the membrane) or any Limited Common Elements located on the roof of the Building shall be performed by the Association. If any Limited Common Element is allocated to more than one Unit, the maintenance, repair and replacement cost for such Limited Common Element shall be prorated among such Units based on their relative Allocated Interests. All electrical, plumbing, heating, ventilating and other fixtures and equipment installed within a Unit, as well as all wiring, pipes and conduit serving the Unit commencing at a point where the utilities enter the Unit shall be maintained, repaired and replaced by the Owner of such Unit. All utilities running through an Owner's Unit which serve one or more other Units are General Common Elements (which are the responsibility of the Association under **Article 5.2** below). Such utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Association. Each Owner is also responsible for the maintenance, repair and replacement of all furnishings and other personal property located within the Owner's Unit. An Owner's right to repair and remodel the interior of such Owner's Unit shall be coupled with the obligation to replace any finishing or other materials removed with similar or other types or kinds of materials of at least the same quality. An Owner shall do no act nor any work that will impair the structural soundness or integrity of the Common Elements or impair any easement or encroach upon others' rights created hereunder.

5.2. Association. Subject to **Article 5.3** below, the Association shall be responsible for maintaining, repairing and replacing the General Common Elements, Limited Common Elements not otherwise the responsibility of the Owners and any other portions of the Common Interest Community not otherwise the responsibility of the Owners. The Association shall comply with all Development Agreement provisions relating to the storm drainage facilities, stormwater facilities, all other Standard Operating Procedures set forth on Exhibit C to the Development Agreement and all other improvements comprising a portion of the General Common Elements. The costs of such maintenance, repair and replacement are a Common Expense. In addition, the Association shall be responsible for

snow removal from the sidewalks in front of the Building (even if the sidewalks are not General Common Elements), unless such snow removal is performed by the City. Notwithstanding the foregoing, each Owner is responsible for snow removal from the pathway connecting the entry of their Unit to the sidewalk. In addition, if approved by the Board, the Association may assume any of those maintenance, repair and replacement responsibilities referenced in **Article 5.1** above which are required to be performed by all of the Owners. The cost of any such maintenance, repair and replacement responsibilities which may be assumed by the Association will be Common Expenses.

5.3. Damage by Owner. Notwithstanding anything to the contrary contained herein, if the need for the Association to maintain, repair or replace any item for which it is responsible under this Declaration is caused by the act or omission of a Unit Owner or a guest, invitee, employee, agent or tenant of a Unit Owner, the cost of such repair, replacement or maintenance shall be the personal obligation of such Unit Owner, and any costs, expenses and fees incurred by the Association for the same shall be assessed to such Unit Owner and added to such Owner's Common Expense Assessment. The Association shall have a lien for the payment of such Assessment as provided in the Act and this Declaration.

5.4. Association's Right to Perform Work. In the event any Unit Owner shall fail to satisfactorily perform any maintenance, repair or replacement obligations of such Unit Owner, the Association may give written notice to the Unit Owner of the work required to be performed, and, if such failure to perform the work continues for a period of 30 days after such notice has been given, the Association may enter the Unit and perform the necessary maintenance, repairs or replacements. If, in the reasonable judgment of the Board, emergency circumstances exist as a result of any Unit Owner failing to perform such Owner's maintenance, repair or replacement obligations, the Association may enter the Unit and perform the necessary maintenance, repair or replacement without prior written notice to the Unit Owner. The cost of any such maintenance, repair or replacement shall be the obligation of the Unit Owner and shall be added to and become a part of the Common Expense Assessment to which the Unit is subject, and the Association shall have a lien to secure such Assessment as provided by the Act and this Declaration.

5.5. Association's Easement to Perform Work. The Association shall have an easement across each Unit permitting the Association, its agents, employees and independent contractors to enter upon the Unit as reasonably necessary and with reasonable notice (unless emergency circumstances exist in which case no prior notice is necessary) in order to perform the work to be performed by the Association pursuant to the Declaration. All Persons performing such work shall use their best efforts to minimize interference with the Unit Owners' use and enjoyment of the Unit when performing such work. Additionally, the Association shall have an easement across all Common Elements to perform any work pursuant to this Declaration.

6. ASSESSMENTS

6.1. Purpose of Assessments. The Assessments levied by the Association through its Board shall be used (a) for the purposes of promoting the health, safety, and welfare of the Unit Owners, (b) for the maintenance, repair and replacement of the General Common Elements and those Limited Common Elements referenced in **Article 5.2**, (c) to provide other services to Unit Owners, (d) to pay for any common utility expenses not individually metered for each Unit, (e) to pay for any separately metered utility service which is nevertheless billed to the Association, (f) to pay for any common trash collection service, (g) to provide insurance in accordance with the provisions of this Declaration, (h) to operate and administer the Association, and (i) to pay for all other Common Expenses incurred by

the Association in performing its duties under this Declaration and the Act. Furthermore, the Assessments shall provide a reserve fund for replacements on a periodic basis as the Board determines necessary to adequately provide such replacements as may be required by this Declaration.

6.2. Annual Common Expense Assessments. The total annual Common Expense Assessments shall be based upon the budget adopted by the Association to pay the cost of Common Expenses, to pay any other costs for which Assessments may be levied under this Declaration, and to fund any necessary reserves. The Annual Common Expense Assessments shall be allocated as provided in **Article 6.6** below. Within 90 days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail or otherwise deliver in the manner provided in the Notice provision in this Declaration, a summary of the budget to all Unit Owners and shall set a date for a meeting of the Unit Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The Board shall give notice to the Owners of the meeting as allowed for in the Bylaws. The budget proposed by the Board does not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of the votes of the Owners. In the event that the proposed budget is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will be continued until a subsequent budget proposed by the Board is not vetoed by the Owners. If the Board, in its reasonable discretion, deems it necessary at any time following adoption of the annual budget to amend or modify that budget because of unexpected changes in the Association's costs or other unforeseen circumstances, the Board may do so. Copies of the revised budget (including the revised Common Expense Assessments) shall be sent to the Owners in the same manner as the original budget. The Common Expense Assessments shall be collected in periodic installments as determined by the Board. The omission or failure of the Association to fix the annual Common Expenses Assessments for any Assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same.

6.3. Special Assessments. In addition to the annual Common Expense Assessments authorized above, the Association, acting through its Board, may levy, in any fiscal year, one or more Special Assessments, payable over such period of the time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, maintenance, repair or replacement of any General Common Elements and any Limited Common Elements allocated to more than one Unit. Any Special Assessment related to the General Common Elements requires the approval of a majority of a quorum of Board members at a properly called meeting or without a meeting in accordance with the Bylaws. Any Special Assessment related to the Limited Common Elements requires the approval of a majority of a quorum of the members of the Board appointed by the Owners of the Units to which the Limited Common Elements are allocated.

6.4. Utilities.

6.4.1. Separately Metered. If any utility service is separately metered or sub-metered for each Unit but the Association receives the bill for such service, the cost of service shall be allocated among the Units based on the metered usage of each Unit and billed to each Unit Owner as part of that Owner's Common Expense Assessment.

6.4.2. Not Separately Metered. If utility service is provided to more than one Unit by a single meter or for a single charge, the charges for such utility service shall be divided on such basis as the Board determines equitable between the Units served by the single meter or for the

single charge. The resulting charge for each Unit so served shall be added to the Common Expense Assessment levied on account of the Units served.

6.5. Individual Unit Assessments. The costs referenced in **Articles 5.3** and **5.4** above shall be added to and become part of the Common Expense Assessment against the subject Owner's Unit. Similarly, Fines levied pursuant to this Declaration or the Rules and Regulations of the Association shall be added to the Common Expense Assessment against the Unit of the Owner subject to the same.

6.6. Allocation of Common Expense Assessments. Except as otherwise provided under **Article 6.5** above, Common Expense Assessments and Special Assessments shall be allocated to the Units as follows:

6.6.1. The portion of the Common Expense Assessments covering Common Expenses which are for General Common Elements shall be allocated against the Units in the percentages set forth on **Exhibit B**.

6.6.2. The portion of the Common Expense Assessments covering Common Expenses which are for Limited Common Elements shall be allocated against the Units served thereby pro rata based on each Unit's respective percentage set forth on **Exhibit B**.

6.7. Commencement. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Unit to a Purchaser occurs. The first installment of Common Expense Assessments for each Unit shall be prorated according to the number of days remaining in the period of that first installment and shall be prepaid to the end of such installment period at time of the initial conveyance.

6.8. Statement of Assessments. The Association shall, during business hours and for a reasonable fee as determined by the Board, furnish a statement setting forth the amount of unpaid Common Expense Assessments against a Unit upon the request of the Unit Owner, the Mortgagee, or the designee of either. The request and the Association's response shall be hand delivered or mailed by first-class mail, postage prepaid. The Association's failure to furnish such statement of Common Expense Assessments within 14 days of receipt of a request shall cause the forfeiture of the Association's right to assert a lien of the priority provided by the Act upon the Unit for unpaid Common Expense Assessments due as of the date of the request.

6.9. Personal Obligation. Each Unit Owner, by acceptance of the deed for any Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay all Assessments. Such Assessments, including fees, charges, late charges, attorney fees, court costs, Fines and interest charged by the Association, shall be the personal, joint and several obligation of the Unit Owner at the time when the Assessments or other charges became due. The personal obligation to pay any sums due the Association shall not pass to a successor in title unless expressly assumed by the successor.

6.10. Default. Any Assessment, Fine, charge, fee, or penalty provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 10 days after the date due, shall bear interest at 18% per annum or at such other lawful rate as may be set from time to time by the Board. In addition, the Board may assess a late charge thereon. Any Owner who fails to pay any Assessment, Fine, charge, interest, late charge, fee, or penalty of the Association shall also be obligated to pay to the Association all costs and expenses incurred by the Association, including reasonable

attorneys' fees, in collecting the delinquent amount, whether or not suit is filed. If any Assessment is payable more frequently than annually (such as monthly or quarterly) and any installment is not fully paid within 10 days after the due date, the Board, in its discretion and in addition to any other remedies arising from such delinquency, may declare the entire remaining balance of such Assessment for the current fiscal year to be immediately due and payable on 10 days' written notice to the delinquent Owner. The total amount due to the Association, including unpaid Assessments, Fines, fees, charges, penalties, interest, late payment charges, costs and attorneys' fees shall constitute a continuing lien on the defaulting Owner's Unit, which lien shall have such priority, rights and characteristics as provided in the Act. The Association may bring an action, at law or in equity, or both, against any Owner personally obligated to pay any amount due to the Association and may also proceed to foreclose its lien against such Owner's Unit. An action at law or in equity by the Association against a delinquent Owner to recover a money judgment for unpaid amounts due to the Association may be commenced and pursued by the Association without foreclosing or in any way waiving the Association's lien. Foreclosure or attempted foreclosure of the Association's lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent amount due to the Association. Additionally, if any Owner does not timely pay Assessments, the Association in its discretion may suspend the voting rights of the Owner and the member of the Board appointed by such Owner during the period of default. The member of the Board whose vote is to be suspended shall not be permitted to vote on such suspension.

6.11. No Offsets. All Assessments shall be payable as specified by the Association, and no offset or reduction shall be permitted for any reason including, without limitation, any claim that the Association or its Board is not properly performing its duties or exercising its powers under this Declaration.

6.12. Capitalization of Association. Each time a Unit is sold, the Purchaser, at closing, shall make a contribution to the working capital of the Association in an amount equal to two-twelfths $2/12$ ths of the annual Common Expense Assessment for that Unit for the year in which the closing occurs. This amount shall be in addition to, not in lieu of, the annual Common Expense Assessment and shall not be considered an advance payment of such Assessment. Notwithstanding the foregoing, when the initial Purchaser of a Unit acquires title to the Unit, the Purchaser shall make a contribution to the working capital of the Association in an amount equal to nine hundred fifty two dollars (\$952.00) in lieu of the payment required by the foregoing sentence.

7. USE AND OTHER RESTRICTIONS

7.1. General Restriction. The Units and Common Elements shall be used only for the purposes allowed by this Declaration and by applicable laws, regulations and ordinances.

7.2. Residential Use Units. All Units shall be used for residential dwelling purposes only. Unit Owners may rent or lease Units to others for residential dwelling purposes, subject to such Rules and Regulations as may be adopted by the Board from time to time. Any lease for a Unit shall contain a provision that the tenant shall be bound by the terms of this Declaration and any other governing documents of the Association; provided, however the Unit Owner shall not be relieved from any responsibility for compliance with this Declaration and such governing documents thereby. Unit Owners may use the Units for home occupations which are permitted by applicable governmental regulations and which do not cause unreasonable disturbance to any other Owners. No short term rentals of less than one month are permitted.

7.3. Pets. Pets are permitted in the Building, but pets kept in any Unit shall be for the private enjoyment of the Unit Owner or tenant and not for commercial breeding. The Board may adopt reasonable Rules and Regulations for the Units concerning pets, including their numbers, control outside the Unit, noise and sanitation.

7.3.1. Declarant, at its option, may, install an electronic fencing system for animals in the Courtyard adjacent to one or more Units for of the exclusive benefit of Unit. The cost of such electronic fencing system and the installation thereof shall be a Common Expense Assessment allocated to the benefited Unit. Such electronic fencing system shall be a Limited Common Element allocated to the benefited Unit and the Owner of such Unit shall be responsible for all maintenance and repair thereof. Upon request of an Owner and approval by the Association, the Association may install such electronic fencing system (or permit the Owner to install such electronic fencing system) pursuant to the terms of this **Article 7.3.1** after the period of Declarant control specified in **Article 4.5**. The Declarant and the Association shall not be responsible for any pets or the functioning of any electronic fencing system and the Owner of any pet (or the Owner of a Unit which permits a pet on its premises) shall indemnify and hold the Declarant and the Association free and harmless from any liability related thereto.

7.4. Trash Restrictions. All Units shall be kept in a clean and sanitary condition, and no trash, rubbish, refuse or garbage shall be allowed to accumulate, nor any fire hazard to exist.

7.5. Nuisance and Waste. No noxious or offensive activity shall be permitted in or on any Unit or on the Common Elements nor shall anything be done therein which may be or become an annoyance or nuisance to any Owner. No waste shall be committed on any Unit or any part of the Common Elements.

7.6. Hazardous Activities. No Owner shall permit anything to be done or kept in or on a Unit or on the Common Elements which will result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law.

7.7. Antennas. Except as otherwise required or allowed by federal or state law, no antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation, including, without limitation, satellite dishes, shall be erected, used or maintained outdoors on the Common Interest Community, unless first approved in writing by the Board.

7.8. Signs. No signs, billboards, poster boards or advertising structures of any kind (including those located upon any Common Element, or located within a Unit but which are visible from outside the Unit) shall be displayed, erected or maintained for any purpose whatsoever except: (a) Unit number signs, (b) customary sized signage advertising a Unit for sale or rent, (c) such signage as is allowed under the Act, and (d) any other signage which may be approved in writing by the Association. Any allowed signage shall be subject to reasonable Rules and Regulations governing such signage to ensure that the design, color, location and general appearance of such signs conform to the aesthetic and architectural standards of the Building.

7.9. Alterations. No alterations or additions to the Common Elements shall be made without the prior written consent of the Board and, if required, the City. The Board shall exercise reasonable judgment to the end that all alterations to the Common Elements conform to and harmonize with existing surroundings and structures. The Board has the absolute right to deny any requested

changes which the Board reasonably determines do not conform to and harmonize with existing surroundings and structures. Nothing shall be done by any Person in, or to any portion of the Common Interest Community which may impair the structural integrity of its improvements.

7.10. Changes to Unit Boundaries. Owners may alter or relocate the boundaries between adjoining Units subject to (a) the review and written approval of the Board, (b) compliance with the Act, and (c) the receipt of all required approvals from any governmental authorities. By way of clarification, any Unit boundary relocation done in accordance with §38-33.3-212 of the Act only requires the approval of (a) the Unit Owners who are seeking the boundary relocation and (b) the Board. Approval by Mortgagees and by Owners other than the Owners of the Units involved in the boundary relocation is not required. Allocated Interests for the Units subject to any boundary relocation shall be reallocated in the resulting amendment to the Declaration. No boundary alteration or relocation may impair any easement rights under this Declaration or alter the Common Elements.

7.11. Subdivision of Units. A Unit may not be subdivided without the unanimous consent of the Owners.

7.12. Lighting, Sound and Odors. No light shall be emitted from any Unit which is unreasonably bright or causes unreasonable glare. No sound shall be emitted which is unreasonably loud or annoying. No odor shall be emitted which is noxious or unreasonably offensive to others.

7.13. Limit on Timesharing. No Owner shall have the right to offer or sell any interest in such Owner's Unit under a "timesharing" or "interval ownership" plan, or any similar plan of ownership. This restriction shall not be construed to prevent multiple Owners of a given Unit from agreeing among themselves on periods during which each shall have exclusive rights to occupy and use their Unit.

7.14. Window Coverings. All window coverings shall comply with any Rules and Regulations which may be adopted from time to time by the Board.

7.15. Parking and Garages. The Owner of a Unit, together with such Owner's tenants, guests and invitees, may park in whatever parking spaces are available within the public right-of-way (public streets) in the vicinity of the Common Interest Community, but shall not use any Parking Spaces allocated to the Owners of other Units. If the Owner of Units A or D utilizes the Flex Space as a parking spot, only the Owner of such Unit or such owner's tenants, guests or invitees may use the Flex Space as a parking spot.

7.16. Rules and Regulations. Reasonable Rules and Regulations concerning and governing the Common Interest Community may be adopted, amended or repealed from time to time by the Board. No Rules and Regulations shall contradict or be inconsistent with this Declaration.

8. SPECIAL DECLARANT RIGHTS

8.1. Special Declarant Rights. Subject to the limitations of the Act, Declarant reserves the right for the maximum time limit allowed by law (or, to the extent no such time limit is fixed by law, for a period of Declarant control specified in **Article 4.5** above) to perform the acts and exercise the rights specified below ("Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

8.1.1. Completion of Improvements. The right to construct and complete improvements within the Common Interest Community.

8.1.2. Sales, Management and Marketing. The right within the Common Interest Community to maintain sales offices, construction offices, management offices, model Units, and signs, flags and other on-site marketing and sales promotion materials advertising the Common Interest Community. The Declarant shall have the right to determine the number of model Units and the size and location of any sales offices, management office, and model Units. The Declarant shall also have the right to relocate any sales offices, management offices, and model Units from time to time at its discretion. After the Declarant ceases to be the Owner of a Unit, the Declarant shall have the right to remove any sales offices and management offices.

8.1.3. Construction and Access Easements. The right to use easements through the Common Interest Community for the purpose of making improvements and to provide access within the Common Interest Community.

8.1.4. Control of Association and Board. The right to appoint or remove any officer of the Association or any Board member.

8.2. Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant reserves the following additional rights ("Additional Reserved Rights") for the time specified in **Article 8.1**:

8.2.1. Amendment of Declaration. The right to amend the Declaration in connection with the qualification or continued qualification for loan guarantees, and for compliance with any lending or financing requirements or programs. Declarant also has the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.

8.2.2. Amendment of Map. The right to supplement or amend the Map.

8.2.3. Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, utilities, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of the Unit Owners.

8.2.4. Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, for the benefit of the Unit Owners.

8.2.5. Reserved Limited Common Elements. The right to allocate areas as Limited Common Elements.

8.2.6. Other Rights. The right to exercise any additional reserved right created by any other provision of this Declaration.

8.3. Rights Transferable. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of the Declarant may be transferred to any Person

by recording an instrument describing the rights transferred. Such instrument shall be executed by the transferor Declarant and the transferee.

9. **EASEMENTS**

9.1. **Declarant's Easement.** Declarant has such an easement through and upon the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Special Declarant Rights. In particular, Declarant reserves the right to perform construction work and store materials on the Common Elements, the right to control such construction work, and the right of access to the work until its completion. Declarant's easement includes the right to construct utility lines, pipes, wires, ducts, conduits, storm drainage improvements, and other facilities in the Common Interest Community for the purpose of furnishing utility and other services to the Common Interest Community. Declarant's easement also includes the right to grant easements to public utility companies and to convey improvements within those easements.

9.2. **Owners' Easements.** Each Owner shall have a perpetual exclusive easement of use and enjoyment in and to those Limited Common Elements allocated to such Owner's Unit and shall have a perpetual exclusive easement over and across the Limited Common Elements allocated to such Owner's Unit for access to and from such Owner's Unit. Each Owner shall have a perpetual nonexclusive easement over and across the General Common Elements for access to and from such Owner's Unit. Each Owner shall also have a perpetual nonexclusive easement over and across the Common Elements for the purpose of maintaining, repairing and replacing any item for which the Owner is responsible under **Article 5** (such as HVAC equipment outside of the Owner's Unit). Each Owner shall have a perpetual, non-exclusive easement over and across such portion of the Courtyard as may be necessary to access the Trash Enclosure, the Shared Car, the mailboxes and other Common Element.

9.3. **Association Easements.** The Association shall have the easement to perform work on Units referenced in **Articles 5.4** and **5.5** above.

9.4. **Easements Appurtenant.** The easements and rights granted to an Owner shall be appurtenant to the Unit of that Owner. All conveyances of the other instruments affecting title to such Unit shall be deemed to grant and reserve the easements and rights provided for in this Declaration as though set forth in said document in full even though no specific reference to such easement or right appears in any such conveyance or instrument.

9.5. **Limitations on Owners' Rights.** The Owners' rights and easements created by this Declaration shall be subject to the rights of those other easement holders referenced in this Article (in the case of the nonexclusive easements), as well as subject to the following:

9.5.1. The right of the Association to reasonably restrict access and use, such as for closure due to repairs and maintenance.

9.5.2. The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Elements or the alteration or removal of any existing improvements on the Common Elements for the benefit of the Owners.

9.6. **Delegation of Use.** Any Owner entitled to the right and easement of use and enjoyment of Common Elements may delegate to such Owner's employees, tenants, invitees, and customers the

Owner's right to use and enjoyment of the Common Elements, subject to any Rules and Regulations adopted by the Board.

9.7. Utility Easements. There is hereby created a blanket easement upon, across, over and under all of the Common Interest Community for ingress, egress, installation, replacement, repair and maintenance of all utilities, including, but not limited to water, sewer, gas, drainage pipes from the Building rooftop, drainage pipes from other Units, telecommunications, data transmission, cable television and electricity. Each Owner shall allow the Association and its agents (including, without limitation, utility service providers) access through and across such Owner's Unit for maintenance, repair and replacement of utilities that are General Common Elements, following reasonable notice to such Owner. If emergency circumstances exist, no such prior notice is required. All Persons entering an Owner's Unit for the purposes described in this Article shall use best efforts to minimize interference with the Owner's use and enjoyment of the Unit. By virtue of this easement, it shall be expressly permissible for a utility providing electric, telecommunications or television service to the Common Interest Community to install electrical and/or telecommunications wires and conduits on, above, across and under the roof and exterior walls of the Building if so allowed by the City. Notwithstanding anything to the contrary contained in this Article, no utility lines may be installed or relocated within the Common Interest Community except as approved by the Declarant or the Association. Declarant or the Association shall have the right to grant utility and other easements within the Common Interest Community without consent of any Owners of individual Units in the Common Interest Community being required, provided that such easements are for the best interest of the Owners and the Association. The easements provided for in this Article shall in no way affect or restrict any other recorded easement in the Common Interest Community.

9.8. Emergency Access Easement. An easement is granted to all police, fire protection, ambulance and similar emergency agencies or Persons to enter upon all portions of the Common Elements in the performance of their duties

9.9. Easement for Encroachments. If any portion of the Common Elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the reconstruction and the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon a Common Element or upon any adjoining Unit or Units, a valid easement for that encroachment and for the maintenance of the same, so long as it stands, shall and does exist. In the event a structure is partially or totally destroyed and then rebuilt, minor encroachments on parts of the Common Elements and facilities due to reconstruction shall be permitted and a valid easement for such encroachments and the maintenance thereof shall exist.

10. MORTGAGEE PROTECTION

10.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers, and guarantors of certain Security Interests. This Article is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the case of conflict, this Article shall control.

10.2. Notice. Each First Mortgagee, upon written request to the Association, shall be entitled to receive the following and otherwise examine at reasonable times the books and records of the Association for a period of one year following the date of such request:

10.2.1. Budgets, notices of Assessments or any other notice or statement provided under this Declaration by the Association to the Unit Owner covered by the First Mortgagee's First Security Interest.

10.2.2. Any financial statement of the Association, which is prepared for distribution to the Owners, within 90 days following the end of any fiscal year.

10.2.3. Notices of meetings of the Owners.

10.2.4. Notice of the decision of the Declarant or the Owners of the Association to make any material amendment to this Declaration, the Bylaws or the Articles of Incorporation of the Association.

10.2.5. Notice of any condemnation loss or any casualty loss which affects a material portion of the Common Elements or which affects any Unit on which the First Mortgagee holds a First Security Interest.

10.2.6. Notice of any default under this Declaration of the Owner of a Unit in which the First Mortgagee holds a First Security Interest.

10.2.7. Notice of any proposed termination of the Common Interest Community.

10.2.8. Notice of any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

10.2.9. Any other notice or copy provided for elsewhere in this Declaration.

10.3. Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive or examine and shall indicate the address to which any such notice or document shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee, and in the event of multiple requests from purported holders of the same interest, the Association shall honor the most recent request received.

10.4. Rights of First Mortgagees. Notwithstanding any other provisions of this Declaration, unless at least 67% of the First Mortgagees (based upon one vote for each mortgage owned) have given their prior written approval, the Association shall not be entitled to:

10.4.1. Terminate the Common Interest Community for reasons other than substantial destruction or condemnation of the Common Elements.

10.4.2. Use hazard insurance proceeds for losses to any Common Elements other than to repair, replace, or reconstruct the damaged Common Elements.

10.5. Failure to Respond. Any First Mortgagee who fails to deliver to the Association a written negative response within 60 days after the Association sends (a) a request for approval of any matter set forth in this Article or **Article 18.5.2** to the First Mortgagee via certified mail, return receipt requested, and (b) otherwise complies with any additional notice requirements under Colorado law, shall be deemed to have approved of such matter.

11. INSURANCE

11.1. Association Insurance Requirements Generally. To the extent reasonably available, the Association shall obtain and maintain the insurance described in this Article. All such insurance shall be underwritten, to the extent reasonably practicable, with companies licensed to do business in Colorado covering the risks described below. To the extent reasonably practicable, such insurance shall contain the following provisions if appropriate for such insurance:

11.1.1. Waiver of Subrogation. A waiver by the insurer of any right to subrogation under the policy against a Unit Owner, and the Association, its directors, officers, employees and agents.

11.1.2. Act or Omission. An act or omission by a Unit Owner will not void the policy or be a condition of recovery under the policy.

11.1.3. Severability of Interest. A “severability of interest” clause shall be included, providing that the insurance cannot be canceled, invalidated or suspended on account of the negligent or intentional acts of the Association, its directors, officers, employees and agents.

11.1.4. Other Insurance. If there is other insurance in the name of a Unit Owner at the time of the loss which covers the same risk covered by the Association policy, the Association’s policy shall provide primary insurance.

11.1.5. Adjusted Losses. All losses must be adjusted with the Association as the agent of the Unit Owner.

11.1.6. Cancellation. The insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed or nonrenewal has been mailed to the Association, to each Unit Owner and to each Mortgagee Security Interest to whom a certificate of memorandum of insurance has been issued, at their respective last known addresses.

11.1.7. Additional Insureds. The Declarant shall be included as an additional insured on the Association’s liability insurance policy in the Declarant’s capacity as a Unit Owner and member of the Board. The Unit Owners shall be included as additional insureds on the Association’s liability insurance policy but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, or membership in the Association.

11.1.8. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles and any other matters of claims adjustment.

11.1.8.1. To the extent the Association settles claims for damages, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one Unit is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

11.1.8.2. Any loss to any Unit or to any Common Elements which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance

of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the Persons sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any Assessment.

11.2. Association Property Insurance. The Association shall maintain property insurance for broad form covered causes of loss for the Common Elements (including the Building) and the Units within the Building (but not the finished interior surfaces of the walls, floors and ceilings of the Units, and also not those items within the Units which the Owner is otherwise responsible to insure under **Article 11.9** below). The total amount of insurance must be not less than the full insurable replacement cost of all insured property less applicable deductibles at the time the insurance is obtained and at each renewal date, exclusive of land, foundations, excavations, and other matters normally excluded from property insurance policies. The property insurance need not cover improvements installed by Unit Owners, but if they are covered, any increased charge shall be assessed by the Association to those Owners. Any loss covered by the Association's property insurance 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 any other provisions of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, 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 Common Interest Community created by this Declaration is terminated.

11.3. Association Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance, including non-owned and hired automobile liability coverage, personal injury liability coverage, products coverage covering liabilities of the Association, its directors, officers, employees, agents and Members arising in connection with the ownership, operation, maintenance, occupancy or use of the Common Elements and any other area Association is required to maintain, repair or replace pursuant to this Declaration, with a minimum single limit or per occurrence limit of \$1,000,000 or such higher amounts as determined by the Association.

11.4. Association Workmen's Compensation and Employer's Liability Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable law.

11.5. Association Fidelity Bonds. A blanket fidelity bond or dishonesty insurance coverage is required for anyone who either handles or is responsible for funds held or administered by the Association, whether or not he or she receives compensation for his or her services. The bond or insurance shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or its managing agent at any time while the bond or insurance is in force. In no event shall the bond or coverage be for an amount less than the sum of three months' Assessments plus reserve funds.

11.6. Association Directors' and Officers' Liability Insurance. The Board may obtain and maintain directors' and officers' liability insurance covering all of the directors and officers of the Association, with limits as determined by the Board.

11.7. Flood Insurance. The Association shall maintain flood insurance if any part of the Common Interest Community 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 Common Interest Community or the maximum coverage available under the appropriate National Flood Insurance Program.

11.8. Other Association Insurance. The Association may carry other insurance which the Board considers appropriate to protect the Association or the Unit Owners.

11.9. Owners' Insurance. Each Owner shall maintain insurance for such Owner's benefit, at such Owner's expense, covering all furnishings, fixtures, equipment, appliances, window glass, window coverings, wall and ceiling finishes or other coverings, floor coverings, and other items of personal property or other property within the Owner's Unit to the extent not covered by the Association's property insurance policy, provided that the Association may elect to include coverage on such items within each Owner's Unit within the Association's property insurance policy. Furthermore, each Owner shall maintain public liability insurance coverage for and in relation to the Owner's Unit. No insurance coverage obtained by an Owner shall operate to decrease the amount which the Association may realize under any policy maintained by the Association, or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage

11.10. Automobile. The Association shall carry automobile insurance on the Shared Car upon such terms and with such policy limits as determined by the Board from time to time.

11.11. Premiums. Insurance premiums for insurance carried by the Association shall be a Common Expense.

12. DAMAGE OR DESTRUCTION

12.1. The Role of the Board. In the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under **Article 11**, the Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to **Article 11** is sometimes referred to as the "Association-Insured Property").

12.2. 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 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. Such costs may also include professional fees and premiums for such bonds as the Board or the insurance trustee, if any, determines to be necessary.

12.3. 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 of repair and reconstruction of the damaged or destroyed Association-Insured Property, unless the Common

Interest Community is terminated with the consent of Owners holding at least 67% of the votes in the Association and at least 67% of the First Mortgagees, or there is a vote not to repair or reconstruct by Owners holding at least 67% of the votes in the Association and 67% of the First Mortgagees. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

12.4. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association-Insured Property for the benefit of Owners and Mortgagees. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to **Article 6.3**, if permitted under the Act, levy, assess and collect in advance from the Owners of the Association – Insured Property, 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.

12.5. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from any Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from any Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to all Owners or Mortgagees of the Association – Insured Property, as their interests may appear in proportion to each Unit's Allocated Interest in the Association – Insured Property.

13. CONDEMNATION

13.1. 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 Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner of such Common Elements 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.

13.2. 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 of the Common Elements taken 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 60 days after such taking Declarant and Owners who represent at least 67% of the votes of all of the Owners of the Common Elements so taken 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 Board. If such improvements are to be repaired or restored, the provisions

of **Article 12** above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed among the Units according to each Unit's Allocated Interest in the Common Elements taken, first to the Mortgagees and then to the Owners, as their interests appear.

13.3. Complete Condemnation. If all of the Common Interest Community is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that the approval is first obtained of 67% of the First Mortgagees, and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided in **Article 12.5** above.

14. ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to **Article 11**, 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 11** upon their damage or destruction as provided in **Article 12**, or a complete or partial taking as provided in **Article 13** 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.

15. MECHANIC'S LIENS

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

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

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

16. CONSTRUCTION DEFECT CLAIMS

16.1. Construction Defect and Claim. For purposes of this Article:

16.1.1. "Construction Defect" means any alleged defect in the design or construction of any part of the Common Interest Community.

16.1.2. "Claim" means any claim, grievance or dispute arising out of or relating to a Construction Defect.

16.2. Notice of Construction Defect and Right to Repair. Upon discovery of any alleged Construction Defect, and prior to pursuing any other remedies relating to the Construction Defect, the claiming party or parties (being the Association or one or more Owners, and either separately or collectively referred to as the "Claimant") must provide the allegedly responsible party or parties (either separately or collectively referred to as the "Respondent") with written notice of the claimed Construction Defect which specifically identifies the nature and location of the Construction Defect. Notwithstanding the notice requirements of **Article 18.6** below, all notices referenced in this **Article 16.2** shall be given via certified mail, return receipt requested to the current record mailing address of the recipient and shall be considered given three days after being deposited in the United States mail. Respondent then has 15 days after the effective date of Claimant's notice to inspect and conduct any necessary testing with regard to the Construction Defect at Respondent's cost. The Claimant shall provide Respondent with reasonable access to conduct such inspection and testing within the 15-day time period. Within 30 days after the initial inspection or testing, Respondent may elect to repair the Construction Defect by giving the Claimant written notice of its election to repair ("Notice of Election to Repair"). If Respondent elects to repair the Construction Defect, it has the right to do so and the Claimant may not, directly or indirectly, impair, impede or prohibit Respondent from making repairs. Any Respondent Notice of Election to Repair shall (a) offer to compensate the Claimant for applicable damages, if any during the time frame set for repair, (b) include an explanation of the Construction Defect being repaired, and (c) set forth a reasonable completion date for the repair work. Claimant then shall promptly cooperate with Respondent to schedule Respondent's repair work. If Respondent fails to send a Notice of Election to Repair or otherwise comply with the provisions of this Article, if Respondent does not complete the repairs within the time set forth in the notice to repair, or if the repairs do not resolve the Construction Defect, the Claimant may pursue such other remedies as may be provided by this **Article 16**.

16.3. Effect on Statute of Limitations/Repose. If a Claimant sends a notice of Construction Defect to a Respondent in accordance with **Article 16.2** above within the time limit prescribed for filing an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until 60 days after the later of (a) the effective date of the Claimant's notice of Construction Defect, (b) the effective date of Respondent's Notice of Election to Repair, or (c) Respondent's completion of the repairs if Respondent elects to repair the Construction Defect.

16.4. Mandatory Arbitration of Claims.

16.4.1. Subject to the requirements of **Article 16.5** below regarding any Claim brought by the Association, if any Claimant wishes to pursue a Claim against a Respondent that has not otherwise been resolved under **Article 16.2** above or through any additional negotiations between Claimant and Respondent, then Claimant is entitled to initiate, and the Claim shall be resolved by, final, binding arbitration in accordance with the Colorado Uniform Arbitration Act, as amended ("Arbitration Act"). By way of clarification, any unresolved Claim may only be resolved by mandatory arbitration as provided in this Article and not through a Court proceeding. The arbitration will be conducted by a single neutral third-party arbitrator as required by C.R.S. §13-22-211(2) who, to the extent feasible, shall have expertise in the area(s) of dispute, and who shall be selected by agreement of the Claimant and Respondent. If the parties are not able to agree on an arbitrator within 30 days after initiation of arbitration, the parties shall immediately submit (in writing) the names and qualifications of at least two proposed qualified neutral third party arbitrators having, to the extent feasible, expertise in the area(s) of dispute to any presiding judge of the Larimer County District Court who shall select an arbitrator from the names submitted within 30 days after expiration of the initial 30-day time period. Any selection made by such judge shall be final and binding on all parties. The arbitrator selected shall make the disclosures required by C.R.S. §13-22-212. The arbitration must be held at a mutually agreeable location within the City. The arbitration shall be governed by the substantive law of Colorado with regard to any remedy granted, and if the remedy is substantially affected by the arbitrator's failure to follow the substantive law of Colorado, a Court may vacate or refuse to confirm the arbitrator's award on that basis. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any Court having jurisdiction over such Claim.

16.4.2. Claimant and Respondent shall each bear its own costs and expenses including attorneys' fees and an equal share of the arbitrator's fees and any administrative fees associated with the arbitration. Notwithstanding the foregoing, if either party to the arbitration unsuccessfully contests the validity or scope of arbitration in Court, the arbitrator or the Court shall award reasonable attorneys' fees and expenses incurred in defending such contests, including those incurred at trial and on appeal, to the non-contesting party. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator.

16.4.3. The award of the arbitrator shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of Claimant and Respondent.

16.5. Notice to Owners and Approval of Association Action. If the Association, acting through its Board, wishes to pursue arbitration of a Claim against a Respondent under **Article 16.4** above, the Board first shall comply with the notice and meeting requirements of C.R.S. §38-33.3-303.5 (as such statute may be subsequently amended), and obtain Owner approval as also required by such statute prior to initiating arbitration against a Respondent for a Claim.

16.6. Inurement and Amendment. The terms and provisions of this **Article 16** inure to the benefit of Declarant, are enforceable by Declarant, and shall not ever be amended without the written consent of Declarant and without regard whether Declarant owns any portion of the Property at the time of such amendment. BY TAKING TITLE TO A UNIT, EACH OWNER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS **ARTICLE 16** ARE A SIGNIFICANT INDUCEMENT TO DECLARANT'S WILLINGNESS TO DEVELOP AND SELL THE UNITS

AND THAT IN THE ABSENCE OF THIS **ARTICLE 16**, DECLARANT WOULD HAVE BEEN UNABLE AND UNWILLING TO DEVELOP AND SELL THE UNITS FOR THE PRICES PAID BY THE ORIGINAL PURCHASERS. The provisions of this **Article 16** also inure to the benefit of any architect, contractor, subcontractor, affiliate of Declarant, builder, builder vendor, engineer or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to the Property or any other party responsible for any part of the design or construction of any portion of the Common Interest Community, or any of such parties' affiliates, or the officers, directors, partners, shareholders, members, managers, employees or servants of any of them, in addition to the Declarant.

16.7. Inconsistencies. In the event of any inconsistency between the provisions of this **Article 16** and any other provisions of this Declaration, the **Article 16** provisions shall control.

17. CAR SHARING

17.1. Initial Car. Pursuant to Section II(H) of the Development Agreement, the Association shall maintain a "Shared Car" for the use and enjoyment of all Owners and other individuals residing in a Unit. The term "Owner" for purposes of this **Article 17** will be deemed to include other individuals residing in a Unit or any Tenants of a Unit as the context so requires. The Declarant shall either: (i) procure and convey an all-electric vehicle to the Association; or (ii) contract with a company on behalf of the Association to provide an all-electric vehicle for the use of all Owners upon such terms and conditions as Declarant may determine. Such vehicle will be the initial "Shared Car" and the term "Shared Car" shall include all replacements therefore whether owned by the Association or a third party as permitted by this Declaration. After Declarant procures the initial Shared Car the Association shall assume all responsibility for the Shared Car and the enforcement of all provisions of this Declaration and the Association's governing documents related to the Shared Car.

17.2. Location and Charging. Declarant has constructed or will construct an electric vehicle charging station for the Shared car in the Courtyard which may be powered by one or more solar panels. Such solar panels will also provide power to other Common Elements such as exterior lighting. The charging station and solar panels providing electricity to the Common Elements are General Common Elements. The Shared car will be parked adjacent to the charging station, which may be relocated by the Association upon approval of the Board.

17.3. Use. The Shared Car will be used by the Owners for personal purposes only and not as a primary, daily vehicle for any single Owner. The Association will enact rules and regulations governing use and maintenance of the Shared Car by the Owners which may be modified or amended by the Board. Such rules and regulations may provide for a maintenance schedule, cleaning schedule or acquisition by the Association of any subscriptions from companies or individuals which provide such services. Each Owner shall return the Shared Car in good, clean and working condition at the conclusion of each use. The Association may suspend an Owner's right to use the Shared Car due to violations of this Declaration or any rules or regulations related to the use of the Shared Car including, without limitation, refusal to pay Assessments; provided, however, such suspension shall terminate no later than thirty (30) days after the Owner remedies the violation which caused such suspension or thirty (30) days after it is imposed if such violation is not ongoing.

17.4. Replacement Cars. The Association may acquire any replacement vehicles for the Shared Car and may levy Assessments for such purpose. Alternatively, the Association may contract with any Person to provide a Shared Car for use by Owners, whether such Shared Car is parked on the

Property or not, but in all events in compliance with the Development Agreement. Unless the Development Agreement is amended to remove the requirement of a shared vehicle, the Association shall provide a Shared Car at all times except for periods of interruption due to accident or maintenance. The Proceeds from the sale of any Shared Car shall be deposited with the funds of the Association, used to purchase a replacement Shared Car or disbursed to the Owners in equal shares, as determined by the Board.

17.5. Termination and Removal. The Shared Car shall be maintained by the Association so long as required by the Development Agreement but in no event less than two (2) years from the date of this Declaration. If permitted by the foregoing sentence, the Owners may terminate the Shared Car by a vote of the Owners of Units to which at least 75% of the votes in the Association are allocated. Upon such Vote an amendment to this Declaration deleting this **Article 17** shall be recorded with the Clerk and Recorder. In the event of a termination of the Shared Car the Association may remove the charging station and other improvements related to the Shared Car or permit Owners to use such improvements upon such terms and conditions as the Board shall determine.

17.6. Indemnification. The Declarant and Association shall have no liability for failure to maintain the Shared Car or for any other damages or liabilities of any kind related to the existence or use of the Shared Car. The Owners, for themselves and for anyone they permit to drive the Shared Car, hereby agree to indemnify and hold the Association, Declarant and the other Owners free and harmless from and against any and all liabilities of any kind or nature including, without limitation, attorneys' fees and costs, related to such Owner's use of the Shared Car or any use of the Shared Car by any other Person permitted by such Owner.

18. MISCELLANEOUS PROVISIONS

18.1. Enforcement/Attorneys' Fees. Enforcement of any provision of this Declaration, the Act, the Bylaws, and any Rules and Regulations shall be by appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages or other amounts due for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. Such proceedings may be instituted by an Owner or by the Association.

If an Owner fails to timely pay Assessments or any other sums due to the Association, the Owner shall reimburse the Association for its collection costs and reasonable attorneys' fees incurred as a result of such failure without the necessity of commencing a legal proceeding. If an Owner violates any provision of this Declaration, the Act, the Bylaws or any Rules and Regulations, other than the payment of Assessments or any sums due to the Association, the violating Owner shall pay all costs and reasonable attorneys' fees incurred by the Association or any other Owner adversely affected by the violation without the necessity of commencing a legal proceeding. In any civil action to enforce or defend the provisions of this Declaration, the Act, the Bylaws or any Rules and Regulations, the Court shall award reasonable attorneys' fees and costs to the prevailing party. As used above, the term "civil action" does not include any proceeding under **Article 16.4** and the allocation of attorneys' fees and costs in any such proceeding shall be governed by **Article 16.4**.

In addition, the Association may levy Fines. The failure to enforce any provision of this Declaration, the Act, the Bylaws and the Rules and Regulations shall not preclude or prevent the

enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision.

18.2. Severability. If any provision or term of this Declaration is invalidated, such invalidity shall not affect the validity of the remainder of this Declaration.

18.3. Conflict. If there is any conflict between the Declaration and the provisions of the Act, the provisions of the Act shall control. In the event of a conflict between this Declaration and the Bylaws, the Declaration shall control. In the event of a conflict between this Declaration and the Association's Articles of Incorporation, the Declaration shall control.

18.4. Duration. The covenants, conditions and restrictions of this Declaration shall run with the Property, shall be binding on all Unit Owners, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided in this Declaration or the Act.

18.5. Amendment.

18.5.1. General Amendments. Except as otherwise provided in this Declaration or the Act, this Declaration may be amended (by either modifying or deleting any existing provisions, or by adding new provisions) or terminated at any time by a written and recorded amendment which has been approved by a vote of the Owners of Units to which at least 67% of the votes in the Association are allocated; provided that any amendment to **Article 16** made during the period from the date this Declaration is recorded through the date that is eight years after substantial completion of the last Unit constructed in the Common Interest Community also requires the written consent of the Declarant.

18.5.2. Amendments Adverse to First Mortgagees. In addition to the amendment requirements of **Article 18.5.1**, as currently required by Fannie Mae and for so long as such Fannie Mae requirement remains in place, any amendments of a material adverse nature to First Mortgagees must be approved in writing by 51% of the First Mortgagees (based on one vote for each mortgage owned) with such approval governed by **Article 10.5** above.

18.6. Notice. Unless otherwise required by this Declaration or the Act, notice of matters affecting the Common Interest Community may be given to Unit Owners by the Association, or by other Unit Owners, in the following manner: Notice shall be hand delivered or sent by United States mail, first class with postage prepaid, to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner. Such notice shall be deemed given when hand delivered or, if mailed, three days after being deposited in the United States mail.

18.7. Waiver. No provision in this Declaration is waived by reason of any failure to enforce the provision, regardless of the number of violations or breaches which may occur.

18.8. Limited Liability. Neither Declarant, the Association, the Board nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter in which the action taken or failure to act was in good faith and without malice. Such parties shall be reimbursed by the Association for any costs and expenses, including reasonable attorneys' fees, incurred by them with the prior approval of the Association, (which approval shall not unreasonably be withheld) as a result of the threatened or pending litigation in which they are or may be named as parties.

18.9. **Disclaimer Regarding Security.** Neither the Association nor Declarant shall be considered in any way insurers or guarantors of security within the Common Interest Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of any security measures undertaken. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and the Declarant are not insurers of safety within the Common Interest Community and that each Person using the Common Interest Community assumes all risk of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

18.10. **Incorporation of Recitals.** The Recitals are incorporated into this Declaration as substantive provisions.

Dated this 20 day of December, 2020.

L'Avenir, LLC, a Colorado limited liability company

By: **221 E Oak St. Development LLC**, a Colorado limited liability company, Manager

By: [Signature]
Robert L. Davis, Jr., Member

By: [Signature]
Laurie Davis, Member

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

This record was acknowledged before me this 28 day of December, 2020, by Robert L. Davis, Jr. and Laurie Davis, both as Members of 221 E Oak St. Development LLC, a Colorado limited liability company, as manager of L'Avenir, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 4-27-2023

[Signature]
Notary Public

BROOKE MCNAUGHT
Notary Public
State of Colorado
Notary ID # 20154016576
My Commission Expires 04-27-2023

**EXHIBIT A
TO
CONDOMINIUM DECLARATION
FOR
L'AVENIR**

Description of Property

All Units and Common Elements described and depicted on the L'Avenir Condominium Map recorded with the Clerk and Recorder of Larimer County, Colorado on December 23, 2020 at Reception No. 20200109037.

**EXHIBIT B
TO
CONDOMINIUM DECLARATION
FOR
L'AVENIR**

Allocated Interests

Interest in Common Elements, Common Expense Liability and Votes

Unit #	Undivided Interest in Common Elements and Common Expense Liability	Votes in Association
A	25%	1
B	25%	1
C	25%	1
D	25%	1
Total	100.00%	4

**EXHIBIT C
TO
CONDOMINIUM DECLARATION
FOR
L'AVENIR**

Easements and Licenses

Any easements not shown by the public records.

All easements and licenses appearing on the Map, and all supplements and amendments to the Map.

All easements and licenses created by or referenced in the Declaration.

All existing roads, highways, ditches, utilities, reservoirs, canals, pipelines, power, telephone, or water lines, railroads, aircraft overflight paths and rights of way and easements therefore.