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**CONDOMINIUM DECLARATIONS
FOR BEARS DEN CONDOMINIUMS**

THIS CONDOMINIUM DECLARATION FOR BEARS DEN CONDOMINIUMS ("Declaration") is made by Tusso Development and Management, Inc., ("Declarant").

RECITALS

- A. Declarant is the President of that certain real property located in Summit County, Colorado, more particularly described as 117 S. 6th Avenue, Lots 18-24, Block 11, Frisco Town Sub ("Property").
- B. Declarant desires to subject the Property to the provisions of the Colorado Common Interest Ownership Act and the covenants, conditions, restrictions and easements set forth herein.
- C. The name of this Common Interest Community is "Bears Den Condominiums."

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property.

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. The following words, when used in this Declaration or in any Supplemental Declaration, unless inconsistent with the context of this Declaration, shall have the following meanings:

- A. "Act" means the Colorado Common Interest Ownership Act. Section 38-33.3-101 et seq., Colorado revised Statutes, as it may be amended from time to time.
- B. "Allocated Interests" means the Common Expense liability and votes in the Association allocated to each Condominium Unit.
- C. "Articles" means the Articles of Incorporation for Bears Den Condominiums Owners Association, Inc. to be filed with the Colorado Secretary of State, and any amendments which may be made to those Articles from time to time.
- D. "Annual Assessment" means the Assessment levied annually and paid on a prorated basis each quarter.

- E. "Assessments" means the Annual, Special and Default Assessments levied pursuant to Article IX below.
- F. "Association" means the Unit Owners association organized under Section 38-33.3-301 of the Colorado Revised Statutes as Bears Den Condominiums Owner's Association, Inc., a Colorado nonprofit corporation and its successors and assigns.
- G. "Association Documents" means this Declaration, the Plats and Maps recorded and filed pursuant to the Act, the Articles, the Bylaws and Rules, as amended from time to time. Any exhibit, schedule or certificate accompanying a document is part of that document.
- H. "Bylaws" mean the Bylaws adopted by the Association, as amended from time to time.
- I. "Commercial Unit" means the Commercial Units are those designated as C-1, C-2, C-3 and C-4 on the Map, which may be used and occupied for general office or commercial purposes (including the sale of goods or services), and may be used for residential purposes only upon the prior written consent of the Executive Board and the Town of Frisco.
- J. "Common Elements" means all portions of the Property, other than the Units. Without limiting the generality of the foregoing, the following specific provisions shall apply;
- (1) If walls, floors, or ceilings are designated as boundaries of a Units, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint and finished flooring and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the walls, floors or ceilings are a part of the General Common Elements.
 - (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within an partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common element allocated solely to that Unit, and any portion thereof serving more than on Unit or any portion of the General Common elements is a part of the General Elements.
 - (3) Subject to the provisions of paragraph (2) of the Subsection J, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.
- K. "Common Expenses" means (i) all expenses expressly declared to be Common Expenses by this Declaration, any Amendment to the Declaration, or the Bylaws of

the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing, or replacing the General Common Elements including reserves; (iii) insurance premiums for the insurance carried under Article X; and (iv) all expenses incurred on behalf of the Association or the Unit Owners and determined by the Executive Board to be Common Expenses.

- L. "Common Interest Community" means the Property, subject to the Declaration.
- M. "Condominium Unit" means a Unit, together with its undivided Allocated Interest in the General Common Elements as set forth in Exhibit A, as amended.
- N. "Declarant" means Tuso Development and Management, Inc. and its successors and assigns.
- O. "Declaration" means and refers to any recorded instruments, however denominated, that create the Common Interest Community, including this Condominium Declaration; any amendments to those instruments, and also including, but not limited to Plats and Maps.
- P. "Default Assessment" means the Assessments levied by the Association pursuant to Article IX, Section 9.7 below.
- Q. "Development Rights" means those rights granted under the Act including;
- (1) The right to add real estate to the Common Interest Community,
 - (2) The right to create Units, subdivide Units or incorporate additional Units, General Common Elements, Limited Common Elements and Improvement within the Common Interest Community.
 - (3) The right to construct utility lines, pipes, wires, ducts, conduits and other facilities, and grant easements to public utility companies and to convey Improvements within those easements;
 - (4) The right to convert Units to General Common Elements; and
 - (5) The right to withdraw real estate from the Common Interest Community.
- R. "Director" means a member of the Executive Board.
- S. "Executive Board" means the Board of Directors of the Association.
- T. "First Mortgage" means any Mortgage which is not subject to any lien or encumbrance, except those which are given priority by statute.

- U. "First Mortgage" means any person or entity named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.
- V. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the Property, including but not limited to, building, trees and shrubbery planted by the Declarant or the Association, paving walkways, utility lines, pipes wires, ducts, conduits and lighting fixtures.
- W. "Limited Common Elements" means the portion of the General Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration, the Map any amendments thereto or by operation of 38033 and 33.202-(10)(b) and (d) of the Act. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, and patios and all exterior doors and windows or other fixture designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to the Unit and as designated on the Plat.
- X. "Manager" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Executive Board may authorize from time to time.
- Y. "Map" means any condominium map or condominium plat filed with this Declaration depicting or describing Unit boundaries, as the same may be amended or supplemented from time to time.
- Z. "Member" shall mean every person or entity who holds membership in the Association.
- AA. "Mortgage" 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 the Association, and any other consensual lien or title retention contract intended as security for an obligation.
- BB. "Mortgagee" means any person or entity named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- CC. "Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Article XIII of this Declaration.

- DD. "Bears Den Condominiums" means the Common Interest Community created by this Declaration, consisting of the Property, the Units, and any other Improvements constructed on the Property. Bears Den Condominiums is a "condominium" as defined by the Act and is regulated by the Act.
- EE. "Parking Spaces" Parking Spaces (PS) appurtenant to each unit as designated on the plat are to be defined as Limited Common Elements.
- FF. "Person" means a natural person, a corporation, a partnership, an association, a trust or any other entity or any combination thereof.
- GG. "Property" means and refers to the real property subject to this Declaration and such additions to the Property as may in the future be brought within the jurisdiction of the Declaration in accordance with Article III below and are made subject to the provisions of this Declaration and the Act.
- HH. "Residential Unit" means a Unit designated on the map or in Exhibit A thereto as a Residential Unit, denominated Unit 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 or 17 and which may be used solely for residential purposes and may not be used for commercial purposes.
- II. "Rules" means the guidelines, rules, regulations or policies for the use of Units and General Common Elements and for the conduct of persons within the Common Interest Community, adopted by the Executive Board pursuant to this Declaration.
- JJ. "Special Assessment" means an assessment levied pursuant to Article IX, Section 9.6 below on an irregular basis.
- KK. "Special Declarant Rights" means right reserved for the benefit of a Declarant to (A) complete Improvements indicated on Maps filed with Declaration; (B) exercise any Development Right; (C) maintain sales offices, management offices; signs advertising the Common Interest Community, and models; (D) use easements through the General Common Elements for the purpose of making Improvements within the Common Interest Community; (E) make the Common Interest Community subject to a master associate; (F) merge or consolidate a Common Interest Community of the same form of ownership; and (G) appoint or remove an officer of the Association or any Executive Board member during any period of Declarant control.
- LL. "Successor Declarant" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record in the office of the Clerk and Recorder of Summit County, Colorado, designating such party as a Successor Declarant. Upon such recording,

Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

MM. "Unit" means a physical air-space portion of the Common Interest Community designated for separate ownership or occupancy, and the boundaries of which are described in or determined from this Declaration, the Map or any amendment thereto.

NN. "Unit Owner" means the owner of record whether one or more persons or entities, of fee simple title to any Condominium Unit and "Unit Owner" also includes the purchaser under a contract for deed covering a Condominium Unit, but excludes those having such interest in a Condominium Unit merely as security for the performance of an obligation, including a Mortgagee, unless and until such person has acquired fee simple title to the Condominium Unit pursuant to foreclosure or other proceedings.

ARTICLE II DIVISION OF REAL PROPERTY

2.1 Division of Real Property: The Property is hereby divided into four Commercial Units and seventeen Residential Units, each such Unit constituting a separate fee simple estate and designated as Units C-1, C-2, C-3 and C-4 (Commercial Units), Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 (Residential Units) on the Map, and an appurtenant undivided fee simple interest in the General Common Elements as set forth in Exhibit A hereto, together with all easements and rights-of-way appurtenant thereto as provided in the Declaration.

2.2 Description of Limited Common Elements: Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 have decks adjacent to each of said units. Each deck shall be considered a Limited Common Element appurtenant to the Unit and Units to which the deck is adjacent. Units have appurtenant parking spaces as shown on the plat.

2.3 Description of Condominium Units: Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Condominium Unit may describe it substantially as follows; Condominium Unit _____, Bears Den Condominiums, according to the Condominium Plat recorded at Reception No. _____, and the Declaration recorded at Reception No. _____, in the records of the Clerk and Recorder of Summit County, Colorado.

2.4 Title to Units. Title to a Condominium Unit may be held individually or in any form of concurrent, joint or fractional ownership recognized in Colorado. In case of any such concurrent, joint, or fractional ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of a Unit Owner with respect to the Condominium Unit in which he owns an interest. For all purposes herein, there shall be deemed to be only one Unit Owner for each Condominium Unit. The parties, if more than one, having the ownership of a Condominium Unit shall agree among themselves how to share the rights and

obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligation of a Unit Owner hereunder with respect to the Condominium Unit in which they own an interest.

2.5 Separate Taxation: Each Condominium Unit shall be considered a separate parcel of real property and shall be separately assessed and taxed. Declarant shall give written notice to the Assessor of Summit County, Colorado requesting that the Condominium Units be separately assessed and taxed and that the total value of the General Common Elements be assessed and taxed proportionately with each Unit in accordance with such Unit's Allocated Interest as provided in Exhibit A hereto. After this instrument has been recorded in the real estate records of Summit County, Colorado, Declarant shall deliver a copy of this instrument as recorded to the Assessor of Summit County, Colorado.

ARTICLE III DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

3.1 Reservation of Development Rights; The Declarant reserves the following Development Rights:

- A. The right by amendment to the Declaration, to subdivide Units, create Units, allocate Common Elements as a Limited Common Element appurtenant to one or more, but less than all, of the Units or incorporate additional Improvements, Units, Common Elements, and Limited Common Elements within the Common Interest Community.
- B. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities anywhere on the Property not occupied by buildings for the purpose of furnishing utility and other services to buildings and Improvements to be constructed. The Declarant also reserves the right to grant easements to public utility companies and to convey Improvements within those easements anywhere in the Common Interest Community not occupied by buildings, for the above-mentioned purposes.
- C. The right by amendment to the Declaration to convert Units into General Common Elements.
- D. The right by amendment to the Declaration to add or withdraw real estate to/from the Common Interest Community, or to convert Common Elements to Units, and specifically to enclose Parking Spaces (whether an outdoor surface Parking Space or a Parking Space located in the underground parking garage), and to construct additional Units in the airspace above any parking space, Units Improvements, Common Element or Limited Common Element.

3.2 Limitations on Development Rights. The Development Rights reserved in Section 3.1 are limited as follows:

- A. The Development Rights may be exercised at any time without the consent of the Members or the Executive Board, but not more than ten (10) years after the recording of the initial Declaration.
- B. Not more than ten (10) additional Units (including Residential Units, Commercial Units and Garage Units) may be created under the Development Rights.

3.3 Phasing of Development Rights. Real Property adjacent to the Property may be purchased by Declarant and added to Bears Den Condominiums as an additional phase or phases. However, no assurances are made by the Declarant as to where the Declarant will exercise its Development Rights or the order in which or whether additional phases, will be developed. The exercise of Development Rights as to some phases will not obligate the Declarant to exercise them as to other phases.

3.4 Special Declarant Rights. The Declarant reserves the following special Declarant Rights, To the Maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Common Interest Community:

- A. To complete improvements indicated on Maps;
- B. To exercise a Development Right reserved in the Declaration;
- C. To maintain sales offices, management offices, signs advertising the Common Interest Community, and models. Specifically, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common Elements as a model Unit or sales office or management office. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Condominium Units, and to conduct general sales activities;
- D. To use the Parking Spaces for storage;
- E. To use the Common Elements for the purpose of making Improvements within the Common Interest Community;
- F. To appoint or remove an officer of the Association or an Executive Board member during a period of Declarant control subject to the provisions of Section 3.8 of this Declaration;
- G. To make the Common Interest Community subject to a Master Association;
- H. To merge or consolidate the Common Interest Community with another Common Interest Community of the same form of ownership;
- I. To amend the Declaration in connection with the exercise of any Development Rights;

- J. To amend the Maps or Plats in connection with the exercise of any Development Rights;
- K. To establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to street, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservations, exceptions and exclusion for the benefit of and to serve the Unit Owners within the Common Interest Community.
- L. To enter into, establish, execute, amend, and otherwise deal with contracts, licenses and agreements for the use, lease, repair, maintenance and regulation of parking and/or recreational facilities, which may or may not be a part of the Common Interest Community for the benefit of the Unit Owners and/or the Association.
- M. To perform warranty work, and repairs and construction work, and to store materials in secure areas, in Units and in Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through discharging the Declarant's obligations or exercising Special Declarant Rights and Additional Reserved Rights, whether arising under the Act or reserved in this Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of Colorado, riparian owners or upland owners to fulfill the plan of development.
- N. To retain all personal property and equipment used in the sales, management, construction and maintenance of the Property that has not been represented as property of the Association. The Declarant reserves the right to remove from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.
- O. To exercise any other right reserved by any other provision of this Declaration.

3.5 Rights Transferable. Any Special Declarant Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in Summit County, Colorado. Such instrument shall be executed by the transferor Declarant and the transferee.

3.6 Limitations on Special Declarant Rights. Unless sooner terminated by an amendment to this Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following: so long as the Declarant (a) is obligated under any warranty or obligation; (b) holds a Development Right; (c) owns any Condominium Unit; (d) owns any Mortgage on any Unit; or (e) for ten (10) years after recording the initial Declaration, whichever is earlier. Earliest termination of certain rights may occur by statute.

3.7 Interference with Special Declarant Rights. Neither the Association nor any Unit Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

3.8 Declarant Control of the Association:

A. Subject to Subsection 3.8B, there shall be a period of Declarant control of the Association, during which the Declarant, or persons designated by the Declarant, may appoint and remove the officers and members of the Executive Board. The period of Declarant control terminates no later than the earlier of:

- (1) sixty (60) days after conveyance of seventy-five percent (75%) of the total Units that may be created to Unit Owners other than a Declarant;
- (2) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business;
- (3) two (2) years after any right to add new Units was last exercised; or
- (4) ten (10) years after the first Unit is conveyed to a Unit Owner other than a Declarant.

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

B. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the total Units that may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the total Units that may be created to Unit Owners other than a Declarant, not less than one-third (33 1/3%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

C. Except as provided in Section 38-33.3-220(5) of the Act, not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of at least three members, at least a majority of whom shall be Unit Owners other than the Declarant or designated representatives of Unit Owners other than Declarant. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

- D. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 38-33.3-308 of the Act, the Unit Owners, by a two-thirds vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

3.9 Turnover of Unit Owner and the Association Property: Within sixty (60) days

After the Unit Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Unit Owners and of the Association held by or controlled by the Declarant, including without limitation the following items:

- A. The original or a certified copy of the recorded Declaration as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any Rules which may have been promulgated;
- B. An accounting for Association funds and financial statements, from the date the Association received funds and ending on the date the period of Declarant control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefore. The expense of the audit shall not be paid for or charged to the Association;
- C. The Association funds or control thereof;
- D. All of the Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of the Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of these properties;
- E. A copy of any plans and specifications used in the construction of the Improvements which were completed within two years before the Declaration was recorded;
- F. All insurance policies then in force, in which the Unit Owners, the Association or its directors and officers are named as insured persons;
- G. Copies of any certificates of occupancy that may have been issued with respect to the Improvements;
- H. Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one year prior

to the date on which Unit Owners other than the Declarant took control of the Association;

- I. Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;
- J. A roster of Unit Owners and Mortgagees and the addresses and the telephone numbers, if known, as shown on the Declarant's records;
- K. Employment contracts in which the Association is a contracting party; and
- L. Any service contract in which the Association is a contracting party or in which the Association or the Unit Owners have any obligation to pay a fee to the persons performing the services.

ARTICLE IV ALLOCATED INTERESTS AND VOTING

Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit A. These formulas are to be used in reallocating interests if Units are added to the Common Interest Community or if Units are converted to Common Elements or Limited Common Elements. Each Unit as designated on the plat, is entitled to one vote per Unit.

ARTICLE V RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

5.1 Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article III, the following use restrictions apply to all Units and to the Common Elements:

- A. Subject to the provisions of Section 5.4, the use of each Residential Unit is restricted to that of a residence and accessory uses as permitted herein and, except for those activities conducted as a part of the marketing and development program of the Declarant, no industry, business, trade or commercial activities (other than home professional pursuits without employees or public visits) or nonresidential storage, or other non-residential use of a Residential Unit, shall be conducted, maintained, or permitted in any part of a Residential Unit. Nothing herein shall be construed to prohibit the rental of a Residential Unit or a bedroom within a Residential Unit, subject to Section 5.2B below.
- B. The use of each Commercial Unit is restricted to general office, retail or commercial purposes, between the hours of 6:00 am and 10:00 pm. The Residential Units shall have no hourly use restriction.

- C. No immoral, improper, offensive or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado and all ordinances, rules and regulations of the County of Summit and Town of Frisco. The violating Unit Owners shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or non-compliance therewith.
- D. Each Condominium Unit shall be inseparable and may be leased, devised or encumbered only as a Condominium Unit.
- E. No electrical device creating electrical overloading of standard circuits may be used without permission from the Executive Board. Misuse or abuse of appliances or fixtures within a Unit which affects any other Unit or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.
- F. Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash will be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.
- G. All fixtures and equipment will be used for the purposes for which they were designed. There shall not be any floor load in excess of fifty pounds per square foot in a Residential Unit, unless special arrangements are made, and an engineering determination of floor load capacity in the area of heavy use is approved by the Association.
- H. No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or occupants. No Unit Owner or occupant shall cause or play, or suffer to be played, any musical instrument or operate or suffer to be operated a stereo system, television set or radio at such high volume or in such other manner that it shall cause unreasonable disturbances to other Unit Owners or occupants.
- I. No animals, birds or reptiles of any kind shall be raised, bred or kept in a Unit except for: No more than two dogs of gentle disposition; no more than two cats. No more than two other household pets, approved and licensed by the Executive Board as to compatibility with the Common Interest Community, may be kept within a Residential Unit. Pets may not be kept, bred or maintained for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three (3) days' written notice following Notice and Hearing from the Executive Board. The owner shall hold the Association harmless from any claim

resulting from any action of his or her pet. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity. The Executive Board may by Rule prohibit Unit Owners and/or tenants from raising, breeding or keeping any animal, bird or reptile of any kind within the Property. The Executive Board may also levy assessments against Unit Owners and tenants for the privilege of keeping a pet or pets within a Unit. All pets must be on a leash when on the Common Elements and Owners must clean up after their pets.

- J. All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screen, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the Unit Owner.
- K. No signs, window displays or advertising visible from outside a Unit shall be maintained or permitted in any part of a Unit except as Declarant might elect for its unsold Units and as otherwise approved by the Executive Board.
- L. All Unit Owners, occupants, guests and invitees shall abide by all Rules adopted by the Executive Board pursuant to this Declaration and the Act.
- M. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable government zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant is authorized to maintain model Units and on-site sales office within any Units.

5.2 Restriction on Alienation.

- A. No Unit Owner shall bring any action for partition or division of the Common Elements.
- B. A Condominium Unit or any part thereof may not be leased or rented for a term of less than two (2) nights. All leases and rental agreements shall be in writing and shall provide that the lease is subject to the requirements of the Association Documents. The Executive Board may by Rule require that each Unit Owner who leases or rents a Condominium Unit utilize a lease form as commonly accepted in the industry.
- C. All leases of a Condominium Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Association Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

- D. An Owner who leases his Residential Unit shall be required to also rent the Parking Space along with the Residential Unit for the parking of a motor vehicle by such tenant.

5.3 Declarant's Right. Notwithstanding the foregoing, as long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees, may maintain any Unit owned by the Declarant or any portion of the Common Elements as model units or sales offices. The Declarant may maintain management offices and signs and display advertising the Common Interest Community and may rent any of the Condominium Units it owns. The Declarant is irrevocably empowered to sell, lease, rent, and/or mortgage Condominium Units and to lease or rent portions thereof, to any purchaser, lessee or mortgage of its choice. Nothing herein shall prevent the Declarant from selling an undivided fractional ownership interest in any Condominium Unit; provided however, that a Unit Owner's interest in the Association's ownership of Common Elements shall never be sold or transferred separate from the sale or transfer of the Condominium Unit. The sales office(s) located off the Property, the furnishings and fixtures of any sales office located within a Unit or elsewhere on the Property, signs and all items pertaining to sales shall not be considered Association Property and shall remain the property of the Declarant.

5.4 Sale of Condominium Units. In the event any Unit Owner desires to sell his Condominium Unit, the Unit Owner shall have the right to do so only upon compliance with Article XVII hereof.

5.5 Liability of Unit Owner/Purchaser/Tenant. The liability of the Unit Owner under the covenant of this Declaration shall continue, notwithstanding the fact that he may have leased, rented or sublet said interest, as provided herein. Every purchaser, tenant, lessee or other occupant shall take occupancy subject to the Association Documents.

5.6 Additions, Alterations and Improvements by Unit Owners.

- A. No Unit Owner will make any structural addition, structural alteration, or structural improvement in or to his Unit or Common Interest Community without the prior written consent thereto of the Executive Board in accordance with Subsection 5.6C.
- B. Subject to Subsection 5.6A, a Unit Owner:
- (1) May make any other improvements or alterations to the interior of his or her Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community.
 - (2) May not change the appearance of the Common Elements, or the exterior appearance of a Unit, or any other portion of the Common Interest Community, without permission of the Association.

- (3) After acquiring an adjoining Unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a General Common Element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Interest Community. Removal or alteration of boundaries, if an adjoining Unit is acquired, boundaries may be reallocated pursuant to Section 38-33.3-212 of the Act.
- C. A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 5.6A or 5.6B. The Executive Board shall answer any written request for such approval, within sixty (60) days after the request therefore. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules.
- D. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its members to any contractor, sub-contractor or materialman on account of such addition, alteration or improvement or to any person having any claim for injury to person or damage to property arising therefrom.
- E. All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Condominium Units other than those affected by such change.

The provisions of the Section shall not apply to the Declarant in the exercise of any Special Declarant Rights.

5.7 Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Section 9.4 of this Declaration, the Executive Board may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE VI MECHANIC'S LIENS

6.1 No Liability. If any Unit Owner shall cause any material to be furnished to his Unit or any labor to be performed therein or thereon, no other Unit Owner 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 Unit Owner causing it to be done, and such Unit Owner shall be solely responsible to contractors, laborers, thereon or therein. Nothing herein contained shall authorize any Unit Owner or any person dealing through, with or under any Unit Owner to charge the Common Elements or any Condominium Unit other than of such Unit Owner with any mechanic's lien or other lien or encumbrance whatever. On the contrary

(and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Elements or against any Unit Owner or any Unit Owner's Condominium Unit for work done or materials furnished to any other Condominium Unit Owner's Unit is hereby expressly denied.

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

6.3 Association Action. Labor performed or materials furnished for the Common Elements, if duly authorized by the Association, in accordance with the Association Documents, shall be deemed to be performed or furnished with the express consent of each Unit Owner and shall be the basis for the filing of a lien pursuant to law against each of the Condominium Unit. In the event a lien is perfected against two or more Condominium Units, the Unit Owners of the separate Condominium Units may remove their Condominium Units from the lien by payment of the fractional or proportional amount attributable to each of the Condominium Units affected. Individual payment shall be computed by reference to the Unit Owner's Allocated Interest. Subsequent to payment, discharge or other satisfaction, the Condominium Unit shall be released from the lien paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lien holder from proceeding to enforce his rights against any Condominium Unit not so released or discharged.

ARTICLE VII EASEMENTS

7.1 Unit Owner's Easement of Enjoyment. Every Unit Owner has a right and easement of enjoyment in and to the Common Elements of the Common Interest Community, subject to the following provisions.

7.2 Recorded Easements. The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to any other easements of record or of use as of the date of recordation of this Declaration.

7.3 Other Easements.

- A. Each Condominium Unit shall be subject to an easement for encroachments created by construction, settling and overhang, previously existing or as designed and constructed by Declarant or as a result of any addition or improvement pursuant to this Declaration.

A valid easement for such encroachments and for the maintenance of same, so long as they exist, shall and does exist. In the event any improvement is partially or totally destroyed, and then rebuilt, the Unit Owners agree that minor encroachments of parts of the adjacent Unit due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

- B. Each Condominium Unit is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future within the Common Interest Community.
- C. There is hereby granted a blanket easement upon, across, over, in and under the Property for the benefit of the Condominium Units and the structures and improvements situated thereon, for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable television and electricity. Said blanket easement includes future utility services not presently available to the Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Units and to affix and maintain the necessary equipment on any of the Units and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property.
- D. There is hereby granted a non-exclusive easement for ingress, egress and business purposes over and across the Common Elements for customers, clients, invitees, agents and suppliers of the Commercial Units.
- E. No Unit Owner shall hinder nor permit his guest, customer, client, invitee or agent to hinder reasonable access by any other Unit Owner and his guest, customer, client, invitee or agent to the Units and parking areas.

7.4 Reservation of Easements, Exceptions and Exclusions. Declarant reserves to itself and hereby grants to the Association the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Elements, for purposes including, but not limited to, paths, walkways, drainage, recreation areas, parking areas, ducts, shafts, flues, conduit installation areas, and to create other reservation, exceptions, and exclusions for the best interest of all the Unit Owner and the Association, in order to serve all the Unit Owners.

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

7.6 Delegation of Use. Any Unit Owner may delegate his right of enjoyment to the Common Elements to the member of his family, his tenants, guests, licenses, customers, clients, agents and invitees, but only in accordance with and subject to the limitations of the Association Documents.

ARTICLE VIII RESPONSIBILITY FOR MAINTENANCE, REPAIR AND REPLACEMENT

8.1 Common Elements. The Association shall be responsible for maintenance, painting, repair and replacement of the Common Elements, including landscaping, lawns, trees, shrubs and all walls, gates, sidewalks roadways, driveways, parking areas, specifically including but not limited to snow removal services, and the cost of said repair and maintenance of the Common Elements shall be a Common Expense of the Association. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color type of materials used to maintain the Common Elements.

8.2 Limited Common Elements. Except as specifically provided in Section 8.4 below, the Association shall be responsible for maintenance, including painting, repair and replacement, of the Limited Common Elements. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the Limited Common Elements. Any expense associated with the maintenance, repair or replacement of any Limited Common Element shall be assessed against the Condominium Units to which that Limited Common Element is assigned, equally, provided further that any expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Condominium Unit or Units benefited. Each Unit Owner shall be responsible for repair or replacement of broken glass in doors and windows.

8.3 Special Easement. Declarant hereby reserves for itself and grants to the Association, the Executive Board, and their respective representatives and agents, a non exclusive easement to enter upon and use the Property on which a Common Element or Limited Common Element is located as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article VIII.

8.4 Unit Owner's Responsibility. Each Unit Owner shall be responsible for maintaining all portions of his Unit; provided, however, the Unit Owner shall also be responsible for maintaining in a clean and orderly condition, including snow removal, any balcony, patio, walkway, stairway or deck area appurtenant to his Unit. Each Unit Owner shall be responsible for repair or replacement of broken window panes. The Association shall be entitled to reimbursement for cost of repair from any Unit Owner who causes, or whose tenant, employee, or guest causes, damage to the Common Elements or Limited Common Elements by an act of negligence or willful misconduct. Each Unit Owner shall also pay his own utilities including electric, gas, phone, sewer, water and cable television. Notwithstanding anything herein to the contrary, in the event of any damage to a Unit or the contents of a Unit from the proper or improper functioning of the sprinkler system that is part of the Common Elements, each Unit Owner shall be responsible for the costs and expenses associated with repairing such damage, including all

consequential damages, in each such Unit Owner's Unit, and Declarant and the Association shall have no liability therefore.

ARTICLE X ASSESSMENTS

9.1 Obligation. Each Unit Owner, by accepting a deed for a Condominium Unit, covenants to pay to the Association (1) the Annual Assessment imposed by the Executive Board as necessary to meet the Common Expense; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (3) Default Assessments which may be assessed against a Condominium unit for the Unit Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Unit Owner under the Association Documents. Fees, charges, late charges, fines, attorney fees and other legal costs of collection of Assessments and other actions to enforce the Association Documents, regardless of whether or not suit was initiated against a Unit Owner pursuant to the Association Documents and the Act, are enforceable as Common Expense Assessments.

9.2 Purpose of Assessments. The Assessments shall be used exclusively to promote health, safety and welfare of the Unit Owners and occupants of Bears Den Condominiums, and for the improvement and maintenance of the Common Elements, and Limited Common Elements, as more fully set forth in the Article below.

9.3 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Unit Owners. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Common Elements and Limited Common Elements; expenses of management; and insurance premiums for insurance coverage as deemed desirable or necessary by the Association and for any insurance required by the Act or this Declaration to be maintained; landscaping, care of ground, common lighting within the Common Elements and Limited Common Elements; routine repairs and renovations in relation to the Common Elements and Limited Common Elements; wages; common water and utility charges for the Common Elements; charges for trash/garbage removal; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance repairs, and replacement of improvements relating to the Common Elements and Limited Common Elements on a periodic basis, as needed.

Annual Assessments shall be payable on a prorated basis on the first day of each quarter in advance, which proration shall be made on the basis of the Allocated Interests in effect on the date of assessment, subject to Section 9.5 below. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Unit Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expense incurred in any fiscal year.

9.4 Budget Adoption and Ratification. Within Thirty (30) days after adoption of a proposed budget for the Common Interest Community, the Executive Board shall mail, by ordinary first-class mail, a summary of the budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting at least eighty percent (80%) of all Unit Owners reject the budget, the budget is ratified whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a subsequent budget proposed by the Executive Board.

9.5 Apportionment of Annual Assessments. Each Owner shall be responsible for that Unit Owner's pro rata share of the Common Expenses, which proration shall be made on the basis of the Allocated Interests in effect on the date of assessment. Notwithstanding anything to the contrary herein, any maintenance, repair or restoration work to Limited Common Elements, at the discretion of the Executive Board, be borne by the Unit Owners of those affected Units only; and any extraordinary insurance costs incurred as a result of the value of a particular Unit or the actions of a particular Unit Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Unit Owner.

9.6 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements or the Common Elements or Limited Common Elements or for any other expense incurred or to be incurred as provided in this Declaration. This Section 9.6 shall not be construed to prescribe the manner of assessing expenses authorized by other section of this Declaration, and in acting under this Section, the Association shall make specific references to this Section. Any amounts assessed pursuant to this Section shall be assessed to Unit Owners on the basis of the Allocated Interests in effect on the date of assessment subject, however, to the requirements that any extraordinary maintenance, repair or restoration work to Limited Common Elements on fewer than all of the Units may, at the discretion of the Executive Board, be allocated to the Unit Owners of those affected Condominium Units only. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Unit Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

9.7 Default Assessments. All monetary fines assessed against a Unit Owner pursuant to the Association Documents or any cost which is incurred by the Association on behalf of a Unit Owner pursuant to the Association Documents, shall be a Default Assessment. Notice of the amount and due date of such Default Assessment shall be sent to the Unit Owner subject to such Assessment at least thirty (30) days prior to the due date.

9.8 Effect of Nonpayment. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall

be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- A. Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- B. Assess an interest charge from the date of delinquency at the annual rate of two points above the prime rate charged by the Association's bank, or such other rate as the Executive Board may establish;
- C. Suspend the voting rights of the Unit Owner during any period of delinquency;
- D. Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- E. Bring an action at law against any Unit Owner personally obligated to pay the delinquent Assessment; and
- F. Foreclose the Assessment lien as more fully described below.

9.9 Assessment Lien.

- A. The Association has a lien on a Condominium Unit for any Assessment levied against the Condominium Unit or fines imposed against its Unit Owner from the time the Assessment or fine becomes due. Fees, charges, late charges, fines, and attorney fees and other legal costs of collection of Assessments and other actions to enforce the Association Documents, regardless of whether or not suit was initiated, and interest charged pursuant to the Association Documents and the Act, are enforceable as Assessments under this Section. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment thereof becomes due.
- B. A lien under this Section is prior to all other liens and encumbrances on a Condominium Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a First Mortgage on the Condominium Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Condominium Unit. A lien under this Section is also prior to all Mortgages described in Subdivision (2) of this Subsection to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to Section 38-33.3-315 (1) of the Act which would have become due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce either the Association's lien or a Mortgage described in Subdivision (2) of this Subsection, but in no event shall the priority accorder under this Subsection to such lien exceed one hundred fifty percent of the

average monthly Assessment during the immediately preceding fiscal year multiplied by six. This Subsection does not affect the priority of mechanic's or materialman's liens, or the priority of a lien for other Assessments made by the Association. A lien under this Section is not subject to the provision of homestead exemption provided in Section 38-41-201 et seq. Colorado Revised Statutes.

- C. Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for Assessment under this Section is not required.
- D. A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the Assessment becomes due; provided that if a Unit Owner of a Condominium Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- E. This Section does not prohibit an action to recover sums for which Subsection A of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.
- F. A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
- G. A judgment or decree in an action brought under this Section is enforceable by execution.
- H. The Association's lien may be foreclosed in like manner as a mortgage on real estate.
- I. In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver of the Condominium Unit to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay to the Association during the pendency of the action any sums held by the receiver to the extent of the Association's Assessments.
- J. If a holder of a First Mortgage on a Condominium Unit forecloses that Mortgage, the purchaser at the foreclosure sale is not liable for any unpaid Assessments against that Condominium Unit which became due before the sale, other than the Assessments which are prior to that Mortgage under Subsection 9.9B of this Declaration. Any unpaid Assessment not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.
- K. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

- L. The Association shall have the power to bid on a Condominium Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

9.10 Personal Obligation. The amount of any Assessment chargeable against any Condominium Unit shall be a personal and individual debt of the Unit Owner of same. No Unit Owner may exempt himself from liability for the Assessment by abandonment of his Condominium Unit or by waiver of the use or enjoyment of all or any part of the Common Elements. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expense of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

9.11 Successor's Liability for Assessment. In addition to the personal obligation of each Unit Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Condominium Unit, except as provided in Section 9.13 below, shall be jointly and severally liable with the prior Unit Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expense, and attorney's fees against such Condominium Unit without prejudice to any such successor's right to recover from any prior Unit Owner any amounts paid by such successor. This liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Condominium Unit. In addition, such successor shall be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 9.13 below.

9.12 Notice to Mortgagee. The Association shall report to any Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same shall have become due, if such Mortgagee first shall have furnished to the Association written notice of the Mortgage and a request for notice of unpaid Assessments. Any Mortgagee holding a lien on a Condominium Unit may pay any unpaid Assessment payable with respect to such Condominium Unit, together with any and all cost as and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Condominium Unit for the amounts paid with the same priority as the lien of the Mortgage.

9.13 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and upon the written request of any Unit Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium Unit, the Executive Board of the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Condominium Unit. Unless such statement shall be issued (which shall include posting in the United States mails) within thirty (30) days, all unpaid Assessments which become due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Condominium Unit subsequent to requesting such statement. If the request is made by a prospective purchaser, the lien for the unpaid Assessment shall be released automatically if the statement is not furnished within the thirty (30) days, all unpaid Assessments which become due prior the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest in the Condominium

Unit subsequent to requesting such statement. If the request is made by a prospective purchaser, the lien for the unpaid Assessment shall be released automatically if the statement is not furnished within the thirty (30) day period provided for above, and if after that period any additional written request is made by such purchaser and is not complied with within ten (10) days and the purchaser subsequently acquires the Condominium Unit.

9.14 Capitalization of the Association. Upon acquisition of record title to a Condominium Unit from Declarant or any seller after Declarant, in addition to the Assessments described herein, each Unit Owner shall contribute to the working capital and reserves of the Association an amount equal to one-quarter (1/4) of the Annual Assessment determined by the Executive Board for that Condominium Unit for the year in which the Unit Owner acquires title. Said funds shall remain in the Association and the Unit Owner shall have no future claim to them or any other surpluses the Association might accrue.

ARTICLE X INSURANCE

10.1 Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States First Class Mail to all Unit Owners and Mortgagees who have furnished the Association a request for such notice at their respective last known addresses.

10.2 Property Insurance.

- A. The Association shall maintain property insurance covering:
 - (1) The project facilities (which term means all buildings on the Property, including the Units and all fixtures and equipment and such personal property of Unit Owners as is normally insured under building coverage, but not the finished interior surfaces of the walls, floors and ceilings of a Unit), but excluding land, excavations, underground pilings, piers, pipes, flues and drains and other items normally excluded from property policies; and
 - (2) All personal property owned by the Association.
- B. The project facilities shall be insured for an amount (after application of any deductions) not less than the full insurable replacement cost of the project facilities at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Personal property owned by the Association shall be insured for an amount equal to its actual cash value. The Executive Board is authorized to

obtain appraisals periodically for the purpose of establishing said replacement cost of the project facilities and the actual value of the personal property, and the cost of such appraisal shall be a Common Expense.

C. Risks Insured Against. The insurance shall afford coverage for broad form covered causes of loss.

D. Other Provisions. Insurance policies required by this Section shall provide that:

- (1) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner;
- (2) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy;
- (3) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;
- (4) Loss must be adjusted with the Association;
- (5) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's Mortgagee;
- (6) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice to the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Mortgage to whom a certificate or memorandum of insurance has been issued, at their respective last known address.

10.3 Liability Insurance. The Association shall maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements, in an amount deemed sufficient by the Executive Board but not less than \$1,000,000.00, insuring the Executive Board, the Unit Owners' Association, the manager, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as a Unit Owner and Executive Board member. The Unit Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

10.4 Fidelity Bonds. At any time there are thirty (30) or more Units in the Common Interest Community, a blanket fidelity bond is required for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the agent at any time while the bond is in force and in no event less than the sum of two months' assessments plus reserve funds. The bond shall include a provision that calls for thirty (30) days written notice to the Association before the bond can be cancelled or substantially modified for any reason.

10.5 Unit Owner Policies. An insurance policy issued to the Association does not obviate the need for a Unit Owner to obtain insurance for his or her own benefit, covering loss or damage to personal property in such Unit Owner's Unit, and finished interior surfaces of the walls, floors and ceilings of a Unit Owner's Unit, and covering liability for injury, death or damage occurring inside such Owner's Unit.

10.6 Worker's Compensation Insurance. The Executive Board shall obtain and maintain workers' compensation insurance to meet the requirements of the laws of the State of Colorado.

10.7 Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

10.8 Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners or the Common Interest Community.

10.9 Premiums. Insurance premiums shall be a Common Expense.

ARTICLE XI MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

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

11.2 Transfer of Membership. Any Unit Owner shall not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of the Condominium Unit and then only to the purchaser or Mortgagee of his Condominium Unit.

11.3 Membership. Members shall be all of the Unit Owners of Condominium Units including Declarant. When more than one person holds an interest in any Condominium Unit, all such persons shall be Members. The vote for each such Condominium Unit shall be exercised by one person or alternative persons (who may be a tenant of the Unit Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Condominium

Unit shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter.

11.4 Compliance with Association Documents. Each Unit Owner shall abide by the benefit form each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Condominium Unit for the benefit of all other Condominium Units.

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

11.6 Manager. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The employment shall be by written contract having a term of no more than three years and shall be subject to cancellation by the Association on ninety days notice, with or without cause, and without a cancellation fee. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Executive Board.

11.7 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE XII POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

12.1 Executive Board. The Executive Board shall have power to exercise all powers of the Association authorized under Section 38-33.3-302 of the Act and to take the following actions:

- A. Adopt and publish Rules governing the use of the Common Elements, including any recreational facilities which may be constructed on such property, and governing the personal conduct of the Members and their guests, and the Association may, after Notice and Hearing , establish penalties, including , without limitation, the imposition of fines, for the infraction of such rules and regulations;

- B. Suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in Article IX, Section 9.7. Such rights may also be suspended after Notice and Hearing for a period not to exceed ninety (90) days for infraction of published Rules, unless such infraction is ongoing, in which case the rights may be suspended during the period of the infraction and for up to ninety (90) days thereafter. No such suspension shall affect the rights of a First Mortgagees;
- C. Assign its right to future income, including the right to receive Common Expense Assessments; and
- D. Exercise for the Association all powers, duties, and authority vested in or delegated to the Executive Board and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association.

ARTICLE XIII NOTICE AND HEARING

13.1 Right to Notice and Hearing. Whenever the Association Documents require that an action be taken after "Notice and Hearing", the following procedure shall be observed: The party proposing to take the action (e.g., the Executive Board, a committee, an officer, or Manager, etc.) shall give notice of the proposed action to all Unit Owners whose interests would be significantly affected by the proposed action in writing which shall be delivered personally or by mail to such Unit Owners at such address as appears in the records of the Association. The notice shall be delivered personally or mailed not less than five (5) days before the proposed action is to be taken. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

13.2 Appeals. Any Unit Owner having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within forty-five (45) days, giving the same notice and observing the same procedures as were required for the original meeting.

ARTICLE XIV CONDEMNATION

14.1 Rights of Unit 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 are conveyed in lieu of taking under threat of condemnation by the Executive Board active as attorney-in-fact for all Unit Owners under instructions from any authority having the power of condemnation or eminent domain, each Unit Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Unit Owners in the proceedings incident to the condemnation proceeding unless otherwise prohibited by law.

14.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Unit Owners for whom use of the Common Elements was taken or conveyed, and the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking seventy-five percent (75%) of the votes of the Members and First Mortgagees whose liens collectively encumber at least seventy-five percent (75%) of the Condominium Units, otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If 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 shall be distributed in equal shares per Condominium Unit among the Unit Owners and Mortgagees, as their interests appear.

14.3 Complete Condemnation. If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Elements shall be distributed to the Unit Owners and Mortgagees, as their interests may appear.

ARTICLE XV DURATION OF COVENANTS, AMENDMENT AND TERMINATION

15.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land unless and until terminated in accordance with Section 38-33.3-218 of the Act.

15.2 Amendment.

- A. Except in cases of amendments that may be executed by a Declarant under Section 38-33.3-208 (3), 38-33.3-209 (6), or 38-33.3-210, or by the Association under Sections 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and (12) of the Act and except as limited by Subsection D of this Section, the Declaration, including the Maps, may be amended only by vote or

agreement of Unit Owners of Units to which at least seventy-five percent (75%) of the votes in the Association are allocated.

- B. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article, may not be brought more than one year after the Amendment is recorded.
- C. Each amendment to the Declaration must be recorded in every county in which a portion of the Common Interest Community is located and the amendment is effective only upon recording. An amendment must be indexed in the grantee's index in the name of the Common Interest Community and the Association and in the grantor's index in the name of each person executing the amendment.
- D. Except to the extent expressly permitted or required by the Act or this Declaration, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of unanimous consent of the Unit Owners.
- E. An amendment to the Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.
- F. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.
- G. To exercise any Development Right or Special Declarant Right reserved under Article III of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record new Maps necessary to conform to the requirements of Section 38-33.3-209 of the Act or new certifications of Exhibits previously recorded if the Exhibits otherwise conform to the requirements of said Section.
- H. The amendment to the Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Section 38-33.3-208 of the Act.

15.3 When Modifications Permitted. Notwithstanding the provisions of Section 15.2 above or Section 15.4 below, no termination, extension, modification, or amendment of this Declaration made prior to the termination of the period of Declarant control, shall be effective unless the

prior written approval of Declarant, shall be effective unless the prior written approval of Declarant is first obtained.

15.4 Termination. Termination of the Common Interest Community may be accomplished only in accordance with Section 38-33.3-218 of the Act.

ARTICLE XVI MORTGAGEE'S RIGHTS

16.1 Approval Requirements. Unless first Mortgagees whose liens collectively encumber at least eighty percent (80%) of the Common Elements and at least eighty percent (80%) of the votes of the membership of the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, have given their prior written approval, the Association shall not be entitled to:

- A. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or part of the Common Elements (provided, however, that the granting of easements for public utilities or for other purposes, consistent with the intended use of the Common Elements, or as set forth herein, shall not be deemed a transfer within the meaning of this clause); or
- B. Change the method of determining the obligation, Assessments, dues, or other charges which may be levied against a Unit Owner, except as otherwise provided herein.

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

ARTICLE XVII RESTRICTIONS ON SALES OF CONDOMINIUM UNITS

17.1 Restriction. A Unit Owner's sale of his Condominium Unit shall include the sale of (a) the undivided interest in the Common Elements or Limited Common Elements appurtenant hereto; (b) the interest of such Unit Owner in any Condominium Units theretofore acquired by the Executive Board, or its designee, on behalf of all Unit Owners, or the proceeds of the sale thereof, if any; and (c) the interest of such Unit Owner in any other assets of the Condominium Association, hereinafter collectively called the "Appurtenant Interests".

17.2 No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Condominium Unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the

interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Condominium Unit may be sold, transferred, or otherwise disposed of, except as part of a sale, transfer, or other disposition of the Condominium Unit to which such interests are appurtenant, or as part of a sale, transfer, or other disposition of such part of the Appurtenant Interest of all Condominium Units.

17.3 Consent of Unit Owners to Purchase by Executive Board. Executive Board shall not exercise any option to purchase any Condominium Unit without the prior approval of a majority of the Unit Owners.

17.4 Financing of Purchase of Condominium Units by Executive Board. Acquisition of Condominium Units by the Executive Board, or its designee, on behalf of all Unit Owners, may be made from the working capital and common charges in the hands of the Executive Board, or if such funds are insufficient, the Executive Board may levy an assessment against each Unit Owner in proportion of his ownership in the Common Elements, as a Common Expense, which assessment shall be enforceable in the same manner as provided in Article IX. Alternatively, the Executive Board may borrow money to finance the acquisition of such Condominium Unit, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Condominium Units so to be acquired by the Executive Board.

17.5 Waiver of Right of Partition with Respect to Condominium Units Acquired by Executive Board. In the event that a Condominium Unit shall be acquired by the Executive Board, or its designee, on behalf of all Unit Owners as tenants in common, all such Unit Owners shall be deemed to have waived all rights of partition with respect to such Condominium Unit.

17.6 Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, pledge, hypothecate, sell, or lease his Condominium Unit unless and until he shall have paid in full to the Executive Board all unpaid Common Expenses theretofore assessed by the Executive Board against his Condominium Unit and until he shall have satisfied all unpaid liens against such Unit, except permitted mortgages.

ARTICLE XVIII GENERAL PROVISIONS

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

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

18.3 Conflicts Between Documents. The Association Documents are intended to comply with the Act. In case of conflict between the Association Documents and the provisions of the Act, the provisions of the Act shall control. In case of conflict between this Declaration and the Articles of Incorporation and the Bylaws of the Association, this Declaration shall control.

18.4 Captions. The captions contained in this Declaration are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of the provisions of this Declaration.

18.5 Notices to Owners and Association. Each Unit Owner shall register such Owner's mailing address with the Association, and except for monthly statements, notices of Association meetings, other routine notices and notices which may be sent in another manner in accordance with the provisions of the Declaration, all notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Unit Owner at such registered mailing address. If a Unit Owner fails to register such Unit Owner's mailing address with the Association, such Unit Owner's mailing address shall be deemed to be the address of such Unit Owner's Unit. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, return receipt requested, postage prepaid, to the address of the Association as designated in the Bylaws.

EXHIBIT A

Allocated Interests

(Attached to and made a part of the Declaration for Bears Den Condominiums)

Condominium Unit	Votes	Allocated Interests in General Common Elements and Common Expenses
1	1	4.7619%
2	1	4.7619%
3	1	4.7619%
4	1	4.7619%
5	1	4.7619%
6	1	4.7619%
7	1	4.7619%
8	1	4.7619%
9	1	4.7619%
10	1	4.7619%
11	1	4.7619%
12	1	4.7619%
13	1	4.7619%
14	1	4.7619%
15	1	4.7619%
16	1	4.7619%
17	1	4.7619%
C-1	1	4.7619%
C-2	1	4.7619%
C-3	1	4.7619%
C-4	1	4.7619%
TOTALS	21	100%